

REPORT TO THE
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**A Performance Audit
of
Utah's Jail Reimbursement Program**

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Audit Performed by:

Audit Manager Darin Underwood

Auditor Supervisor Kade Minchey

Audit Staff Brandon Bowen

Tim Salazar

Table of Contents

Page

| | |
|--|----|
| Digest | i |
| Chapter I | |
| Introduction | 1 |
| Audit Scope and Objectives | 5 |
| Chapter II | |
| Billing Errors Exist | 7 |
| County Billing Errors Do Not Appear Intentional | 8 |
| Improvement Can Be Made To Reduce Billing Errors | 14 |
| Recommendations | 17 |
| Chapter III | |
| Jail Reimbursement Policies and Governance Can Improve | 19 |
| Many Outstanding Policy Questions Exist | 19 |
| Outstanding Policy Questions Have Led to Inconsistent Application | 22 |
| UDC Can Improve Governance Over Jail Reimbursement Program | 25 |
| Recommendations | 28 |
| Chapter IV | |
| Legislature May Want To Review Funding Policies | 29 |
| Funding Sufficient in Some Recent Years | 29 |
| Current Jail Reimbursement Program Is Unique | 32 |

Table of Contents (Cont.)

Page

Cost of Funding Program Depends on Legislative Policy 35

Recommendation 38

Appendix A 41

Agency Responses 43

Digest of A Performance Audit of Utah's Jail Reimbursement Program

The Utah State Legislature has established a jail reimbursement program, which is administered by the Utah Department of Corrections (UDC or department). In 1982 the Legislature first began appropriating funds to reimburse county jails for a portion of the costs of housing convicted felons who are sentenced to jail on a condition of probation. Currently, jails are reimbursed 70 percent of the average of their direct costs (*Utah Code* 64-13c-303(1)).

We were asked to review whether billings submitted by the counties were accurate and whether the program was operating efficiently and effectively. We also looked into other funding options for the jail reimbursement program that the Legislature may decide to consider.

Chapter I: Introduction

The Jail Reimbursement Program Has Been Funded at Various Levels Since Its Inception. The jail reimbursement program reimburses county jails 70 percent of their direct costs for inmates who meet three criteria. The criteria are

- Inmate is convicted on a felony charge.
- Inmate is placed on probation.
- Inmate is sentenced to a county jail for 365 days or less.

The jail reimbursement program is different than the Jail Contracting Program. In the Jail Contracting Program, an inmate is sentenced to prison and then later transferred to a county jail under a contract with the UDC and the county jail. UDC pays the jail 100 percent of the average of all the counties' direct costs (the core rate), as well as all medical and transportation costs. Both programs use the same core rate to reimburse the counties. But, under the jail reimbursement program, the state reimburses counties 70 percent of the core rate.

The core rate is a weighted average of all county jails' direct costs established by the state's core rate committee. The Legislature then can approve the number or decide to maintain the current core rate. Appendix A shows the core rate that was proposed by the core rate

Chapter II: Billing Errors Exist

committee for the last several years and the rate that has been approved by the Legislature. The approved core rate for fiscal year 2006 is \$42.32.

County Billing Errors Do Not Appear Intentional. The overall results of our test show that, collectively, county billings contain underbilling and overbilling errors. Together these errors reflect about a 7-percent billing error rate. However, these errors do not suggest that the counties were intentionally finding ways to overbill the state. Instead we found slightly more errors that were actually in favor of the state. Because underbillings total slightly more than overbillings, the net dollar effect is very small. We calculate the net dollar effect for calendar year 2005 to be approximately \$72,000 in favor of the state. We also discovered that a significant increase in billings by one large county (due to improved sophistication in capturing billed days) mostly explains the significant increase in billed bed days that occurred in fiscal year 2005.

Improvement Can Be Made To Reduce Billing Errors. To improve billing accuracy at the counties and reduce the 7-percent error rate that we found, counties should seek to improve and/or review the controls over their billing processes. Improved accuracy can also be achieved through more effective information gathering and training at the county level. We recognize that to do so, counties need to be provided with adequate policy clarification from the UDC, which is a topic in Chapter III. We also believe that it is an opportune time for UDC and the counties to consider more automation in the billing processes. Improved accuracy and fewer billing errors will create a more precise billing program, which should lead to more accurate appropriations through better funding projections.

1. We recommend that the counties seek ways to reduce errors in their billings. Specifically the counties should:
 - Develop and review sufficiency of controls in their jail management and reimbursement databases.
 - Provide written policies on proper billing practices to their billing clerks.
 - Develop specific training on jail reimbursement rules and practices that can be used to train billing clerks.
2. We recommend that the Department of Corrections and the counties consider ways that the jail reimbursement program could be either fully or partially automated.

Many Outstanding Policy Questions Exist. There are not sufficient policies governing the jail reimbursement program. Consequently, a degree of confusion exists in the program. The department needs to address policy deficiencies through collaboration with counties who participate in the jail reimbursement program. Chapter III identifies 10 policy questions that should be resolved.

Outstanding Policy Questions Have Led to Inconsistent Application. UDC creates the possibility for inequities among the counties when they fail to determine jail reimbursement policy and communicate it clearly. We found many examples of inconsistent policy while conducting our review of county billings. Chapter III provides examples of inconsistent application of policies.

UDC Can Improve Governance Over Jail Reimbursement Program. The department can improve their governance of the jail reimbursement program through greater attention to the mission, objectives, and policies of the program. For example, the department should set clear direction for the jail reimbursement program and show greater ownership. As well, the department could more fully utilize their rulemaking authority to govern the program which could help remedy the outstanding policy questions already discussed. Finally, the department could improve their existing audit methods to collect essential data elements in order to set performance measures for the program.

1. We recommend the Department of Corrections formalize their jail reimbursement policies in the rule making process and then develop effective means of distributing the policies to the counties.
2. We recommend that the Department of Corrections improve their governance over the jail reimbursement program by:
 - Establishing a mission and objectives for the program.
 - Establishing performance measures for the program.
3. We recommend that the Legislature consider the department's proposal for additional funding to administer the jail reimbursement program.

Funding Sufficient in Some Recent Years. The jail reimbursement program has been funded at 70 percent for two out of the last three years. However, funding was short in fiscal year 2005 because, as will be

discussed in Chapter II, an unexpected billing increase by one large county caused billings to come in much higher than what was expected and funded. Also, medical and transportation funding has not been consistent in recent years.

Current Jail Reimbursement Program Is Unique. Utah's current jail reimbursement program is unique among other intermountain states. We found that other intermountain states either fully reimburse counties for their direct costs associated with housing felons who were sentenced to county jails or give no reimbursement at all. No other states we reviewed offer partial reimbursement like Utah. We also found that one intermountain state places all felons in state prison.

Cost of Funding Program Depends on Legislative Policy. To fund the program at 70 percent in fiscal year 2007, an appropriation of about \$12.6 million will be required, which represents an increase of 31 percent from fiscal year 2006. The Legislature may want to consider further changing the current funding policy of the jail reimbursement program by either increasing the percent paid to the county for bed days, or pay the counties for all or some portion of their medical and transportation costs. If the Legislature decided for fiscal year 2007 to fund bed days and medical and transportation costs fully, it would require about \$8.6 million more (5.4 million for bed days plus 3.2 million for medical and transportation costs) in ongoing appropriations. This number could increase in future years if billed bed days increase. However, the Legislature may decide to fund these options at a different percentage, or follow the policy of some other states and forgo reimbursing the counties for housing felons sentenced to jails. Chapter IV shows what other funding options would cost the state.

1. We recommend that the Legislature consider reviewing other funding policies for the jail reimbursement program.

Chapter I

Introduction

The jail reimbursement program currently reimburses counties 70 percent of their direct costs.

The Utah State Legislature has established a jail reimbursement program, which is administered by the Utah Department of Corrections (UDC). In 1982 the Legislature first began appropriating funds to reimburse county jails for a portion of the costs of housing convicted felons who are sentenced to jail on a condition of probation. Currently, jails are reimbursed 70 percent of the average of their direct costs *Utah Code* 64-13c-303(1)). This chapter provides introductory information on the jail reimbursement program, as well as a brief history of its policy changes over the years. Legislators asked us to review aspects of the program, which we outline in the Scope and Objectives section of this chapter.

Jail Reimbursement Differs From Jail Contracting

The jail reimbursement program is separate from the jail contracting program.

The jail reimbursement program is different than the jail contracting program. In the jail contracting program, an inmate is sentenced to prison and then later transferred to a county jail under a contract with the UDC and the county jail. UDC pays the jail 100 percent of the average of all the counties' direct costs (the core rate), as well as all medical and transportation costs. Both programs use the same core rate to reimburse the counties. But, under the jail reimbursement program, the state reimburses counties 70 percent of the core rate. The core rate is a weighted average of all county jails' direct costs established by the state's core rate committee. The Legislature can then approve the number or decide to maintain the current core rate. Appendix A shows the core rate that was proposed by the core rate committee for the last several years and the rate that has been approved by the Legislature. The approved core rate for fiscal year 2006 is \$42.32.

Besides the level of funding, another primary difference is that under jail reimbursement, counties must accept the inmate into their jails because the inmate is sentenced there. In contrast, with jail contracting, counties have the option of whether or not to accept prison inmates.

Jail Reimbursement Program Has Inmate Criteria. Three general criteria must exist for counties to get reimbursed for inmates housed in their jails. Inmates must be:

- Convicted on a felony charge
- Placed on probation
- Sentenced to a county jail no more than 365 days

Additionally, UDC uses other, more specific, determinations when reimbursing counties. However, some policy questions exist with these other determinations, requiring clarification by UDC. These questions are addressed in Chapter III.

Figure 1 summarizes some of the primary differences between the jail reimbursement program and the jail contracting program.

Figure 1. Jail Reimbursement Compared to Jail Contracting. Jail reimbursement differs from jail contracting both in the status of the inmate, and in the reimbursement rate received by the counties.

| Aspect of Programs | Jail Reimbursement | Jail Contracting |
|---------------------------|--|---|
| Sentencing | Felony conviction | Felony conviction |
| Inmate Status | Inmate sentenced to county jail by court for 365 days or less, as a condition of probation | Inmate sentenced to prison but housed in a county jail under a contractual agreement between UDC and the county |
| County Reimbursement Rate | 70% of core rate (\$29.62) | 100% of core rate (\$42.32) |

It is generally less expensive to house inmates in jail rather than prison.

Housing Inmates in Jail Can Be Beneficial. Housing inmates in a county jail rather than in the state prison has several benefits. First, it is less expensive to house inmates in jails. The average cost, that was approved by the Legislature, to house inmates in jail during fiscal year 2006 is \$42.32 per inmate day, compared to the current cost to house inmates in prison, which is about \$60 a day. Second, there are benefits to inmates and their families. County jails are generally located closer to an inmate’s family, so it is easier for family members to visit. Also, jails often

offer work release for well-behaved inmates, which can potentially help the inmate's family, as he or she can still help provide for the family.

Timeline Shows Legislative Changes to Jail Reimbursement Program

The jail reimbursement program has undergone several changes since its inception 23 years ago. Many of the changes involved alterations in program funding. The following timeline shows the significant changes that have occurred during the history of the jail reimbursement program.

| <u>Year</u> | <u>Description</u> |
|--------------------|--|
| 1980 | Criminal Code Repealed and Reenacted. Courts were given the authority at this time to sentence offenders to jail on a condition of probation. |
| 1982 | Jail Reimbursement Program Created. House Bill 32 in 1982 first established the jail reimbursement program through an appropriation of \$777,800. It was determined that the money would be used to compensate county jails for the housing of "convicted felons sentenced to serve in county jails as a condition of probation." From 1982 to 1990, a number of changes took place with the reimbursement program until, in 1990, funding was halted to the program while a study examining the issue was initiated. |
| 1988 | State Court System Broadened to Include All District Courts. The "District Court Act" changed district courts from the local court system to the state court system. Consequently, all felons were convicted by a state court under state statute. |
| 1990 | Appropriations Cease While Jail Reimbursement Is Studied. In General Session 1988, House Bill 60 was passed which halted appropriations in fiscal year 1990, so the jail reimbursement program could be further studied. |

Jail reimbursement appropriations ceased for a few years in the early 1990s while the program was studied.

| <u>Year</u> | <u>Description</u> |
|-------------|---|
| 1992 | <p>Recommendation is Made to Resume Jail Reimbursement. In November 1992, the Legislative Fiscal Analyst released a report on its study of jail reimbursement. The report recommended that the state reestablish the jail reimbursement program with the cost of bed days being tied to the state prison cost, up to 80 percent of the prison daily rate. The Commission on Criminal and Juvenile Justice (CCJJ) also released a report in July 1989. This report said that the state should resume financial responsibility of the program by taking away the option of sentencing convicted felons to jail, and instead, place all convicted felons with UDC. UDC would still be able to place inmates in county jails through the jail contracting program.</p> |
| 1994 | <p>Funding for the Jail Reimbursement Program Resumed. Based on the fiscal analyst's recommendations, \$250,000 was appropriated to pay the counties' costs for housing jail reimbursement inmates. House Bill 162 in the 1993 General Session tied the reimbursement rate to the daily inmate cost at the state prison. The intent at that time was that by 1998, over a four-year period, the appropriation would be increased yearly up to 80 percent of the state prison daily inmate cost. In 1998, \$7.4 million was appropriated; this was estimated to be \$2.3 million short by CCJJ.</p> |
| 1999 | <p>Jail Reimbursement and Contracting Become Connected Through Establishment of Core Rate. The current jail reimbursement funding process was established in 1999 with House Bill 118. This legislation connected the jail reimbursement and jail contracting programs by establishing a core rate that applied to both programs. Counties were reimbursed 100 percent of the core rate for housing inmates under this program. Prior to the core rate being established, these two programs were reimbursed at different rates and negotiated separately.</p> |

The current funding policy of reimbursing counties 70 percent of their direct costs was established in 2002, and began in FY 2003.

| <u>Year</u> | <u>Description</u> |
|-------------|--|
| 2002 | Jail Reimbursement Program Funded at 70 Percent. House Bill 319 in the 2002 General Session changed funding to the jail reimbursement program from 100 percent to 70 percent. Also in this year the Legislature modified the Core Rate Setting Committee to its current makeup of four representatives from the counties and three from state agencies. The core rate committee was first established with House Bill 118 in the 1999 general session. The make-up of the original committee consisted of two sheriffs, two county representatives and one representative from the UDC. |
| 2004 | Intent Language Clarified Medical and Transportation Payments for Jail Reimbursement. The Legislature passed intent language stating that counties are not to be reimbursed for medical and transportation costs incurred by condition of probation inmates unless surplus funds are available. The intent language clarified ambiguity in House Bill 319 about the payment of medical and transportation costs associated with condition of probation inmates. |
| 2005 | For fiscal year 2006, \$9.6 million was appropriated to the jail reimbursement program. |

As this timeline shows, the jail reimbursement program has been funded at various levels since its inception. The focus of Chapter IV is to provide policy and funding information that the Legislature may want to consider.

Audit Scope and Objectives

We were asked to audit the state's jail reimbursement program and address concerns raised by both legislative leadership and county officials. The scope of our audit was to review the following areas:

- Billing methodology and the accuracy of jail reimbursement billings submitted by the counties for payment by the UDC
- Policies and administration of the jail reimbursement program by the UDC

As requested by the Legislature, we reviewed the accuracy of counties' billings, and policies governing the program.

- Comparisons of methodologies and policies used in other states and in the federal government to fund jail reimbursement

Chapter II contains our review on the accuracy of county billings. Chapter III discusses how UDC can govern the program more effectively. Chapter IV provides the Legislature with the current status of jail reimbursement funding. Chapter IV also contains policy comparisons from surrounding states, and discusses funding policies that the Legislature may wish to consider.

Chapter II Billing Errors Exist

We found some county billing errors, but these errors do not point to intentional overbillings.

We were asked to review county billings in the state's jail reimbursement program in order to validate the accuracy of billings. Therefore, we conducted a sample of county jail reimbursement billings which showed that, collectively, county billings are overall accurate, but individually some county billings had errors. The errors we identified consisted of underbillings and overbillings, with underbillings being slightly more prevalent. Because underbillings are slightly more common, the aggregate dollar effect to the state is minimal. Based on an extrapolation from our sample, we estimate that collectively counties underbilled the state about \$72,000 during calendar year 2005.

While the aggregate dollar effect is minimal, the aggregate error rate is about 7 percent. We believe that counties need to correct their individual billing errors through improved controls. While the billing errors need to be fixed, we believe that these errors do not point to intentional overbillings. Further, correcting individual county errors should increase the accuracy of funding projections.

Sample Represented 89 Percent of Billed Bed Days

We conducted a stratified random sample to test the accuracy of counties' billings.

Our billing conclusions are based on a stratified random sample that captured billings from counties throughout the state. We believe the sample provided us with a good picture of the jail reimbursement billing process. The sample captured billings from 10 of the 26 counties that operate jails in the state. The 10 counties in the sample represent 89 percent of all billed days during 2005. We selected counties in the sample based on their population size, level of billing sophistication, and concerns voiced to us through UDC. Inmates within these counties were randomly selected. Figure 2 shows that the sampled counties represent most of the billed bed days in the state (a billed bed day represents one day that a county submitted reimbursement for one eligible inmate).

Figure 2. Sample Extracted From 89 Percent of all Billed Bed Days.

The stratified random sample was representative of 89 percent of bed days submitted during the sample period. Counties not included in the sample only accounted for 11 percent of bed days.

| Counties | Bed Days | Percent of Bed Days |
|-------------------------|----------------|---------------------|
| 10 Counties Sampled | 224,814 | 89% |
| 16 Counties Not Sampled | 30,085 | 11 |
| Total | 274,899 | 100% |

Our specific methodology included an examination of 300 inmate billings or 25,770 eligible bed days from the 10 sampled counties. Billing accuracy was determined by visiting the sampled counties and using their database systems to identify the dates inmates were held. The county information was then compared to the number of days that the state reimbursed the county for those inmates. We also used state court data to look at the inmate sentencing and conviction records to ensure that inmates qualified for the program.

County Billing Errors Do Not Appear Intentional

Our testing of county bills suggests that the counties were not intentionally finding ways to overbill the state. Instead, we found slightly more errors that were actually in favor of the state. The overall result of our tests shows that, collectively, county billings contain underbilling and overbilling errors. Together these errors reflect about a 7-percent billing error rate. However, because the total dollar value of underbillings is slightly more than the total dollar value of overbillings, the net dollar effect is very small. We calculate the net dollar effect for calendar year 2005 to be approximately \$72,000 in the favor of the state.

Another result from our sample showed that billing errors were not the driver for the recent increase in billed days. Rather, we found, a significant increase in billings by one large county (due to improved sophistication in capturing billed days) explains the sudden increase in billed bed days. This unexpected increase in billings was substantial

Billing errors do not appear to be the driver for increased bed days.

enough to cause appropriations to be insufficient in fiscal year 2005, on the whole.

Most Billing Errors Are Not Significant

Underbilling errors were slightly more common than overbilling errors.

The findings from the sample indicate that some errors exist in counties' billings; however, these errors do not indicate an overbilling problem. The errors fall into one of two categories: underbillings and overbillings. Underbillings were slightly more prevalent than overbillings. Specifically, underbillings occurred at a rate of 3.7 percent in the sample while overbillings in the sample occurred 3.2 percent of the time. We determined that most county billing errors were insignificant because eight of the 10 counties fall into an acceptable error rate of 5 percent or less. We believe the 5 percent rate is acceptable because it is approximately one standard deviation. The department or counties may, in the future, decide to use a tighter standard.

Figure 3 illustrates the errors by billed bed day and the percent accuracy of county billings. Days below the eligible amount (negative numbers) show that the county underbilled the state more than it overbilled the state. Likewise, just the opposite is true with days above the eligible amount. The eligible amount is represented as 100 percent.

Figure 3. Most County Billings are Accurate. The figure shows that underbillings are slightly more common than overbillings. County H and County I exceeded a 5-percent error rate. Taken collectively, the county billings have nearly a 100-percent accuracy rate.

| County | Over billings | Under billings | Days Above (Below) Eligible Amount | Percent of Eligible Days Billed Over/Under 100 |
|-----------------|---------------|----------------|------------------------------------|--|
| County A | 6 | 23 | (17) | 98.2% |
| County B | 0 | 69 | (69) | 95.1 |
| County C | 24 | 13 | 11 | 100.5 |
| County D | 0 | 0 | 0 | 100.0 |
| County E | 28 | 79 | (51) | 96.9 |
| County F | 1 | 5 | (4) | 99.5 |
| County G | 338 | 190 | 148 | 102.2 |
| County H | 371 | 163 | 208 | 105.7 |
| County I | 25 | 300 | (275) | 85.9 |
| County J | 29 | 120 | (91) | 97.1 |
| Total | 822 | 962 | (140) | 99.5% |

All but one county had some billing errors. However, the errors largely cancelled each other out.

In aggregate, the counties’ billings were fairly accurate. However, taken separately, all but one county had some billing errors, even though most county errors were within 5 percent. For the two counties that fell out of the 5-percent range, one was an overbilling and the other was an underbilling.

Underbillings More Prevalent Than Overbillings. Underbillings occur when an inmate qualifies for reimbursement under the jail reimbursement program and is housed in a county facility, but the number of days billed are fewer than the number of eligible days. Conversely, overbilling errors occur when the county bills for more days than an inmate was eligible. Figure 4 shows the number of underbillings and overbillings that occurred in the sample.

Figure 4. A Small Error Rate Was Found in the Sample. The net effect of the errors is a 0.5-percent underbilling.

| | Underbilled | Overbilled |
|--|-------------|------------|
| Number of Errors Found in the Sample | 962 | 822 |
| Percent Error Occurred Based on Bed Days in Sample | 3.7% | 3.2% |

Billing errors consisted of 962 underbillings and 822 overbillings. The underbillings account for 3.7 percent of total billed days while overbillings were 3.2 percent of total billed days. The net effect is a 0.5-percent underbilling in the sample.

Dollar Effect Not Significant. Since the aggregated errors were minimal, the aggregated dollar effect is also minimal. Our sample revealed that underbilling errors have occurred slightly more frequently (less than 1 percent) than overbilling errors. Consequently, the overall dollar effect is minimal. Considering that underbilling virtually cancels out overbilling, the dollar effect in our sample is about a \$4,000 underbilling. Projecting our sample to the population as a whole, we believe the state was underbilled about \$72,000 during calendar year 2005.

As will be explained later in this chapter, some counties have increased their billing sophistication, which in turn means that current billing practices are not representative of past billing practices, and may not be representative of future billings. Therefore, we recommend that counties seek ways to eliminate their billing errors.

While we believe that billing errors will continue to fluctuate in the absence of sufficient controls, we do not believe that the errors we identified show a deliberate intention to overbill the state. Rather, we found that the overbillings that occurred were largely the result of human error and insufficient controls in county billing processes. We did not find any evidence of counties intentionally overbilling.

Two Specific Overbilling Concerns Were Not Found. We did test for two specific concerns passed to us from some Legislators: counties seeking an additional billed bed day by booking inmates late in the night,

The dollar effect of billing errors is minimal. We calculate that the counties under billed the state approximately \$72,000 in CY 2005.

and the use of 402 motions. Regarding the late-night bookings, it was thought that counties might be booking inmates into jail shortly before midnight or releasing them right after midnight in order to qualify for more billing days. However, we did not find any evidence of this while testing counties' billings. In fact, such an action would be very difficult to accomplish because the majority of felons are booked into jail during the court day, or shortly following the end of the court day (5:00 p.m.). Additionally, UDC has an understanding with the counties that they can bill for the first day of incarceration but not the last day, thereby eliminating any benefit of releasing inmates shortly after midnight. Again, in our sample of 300 inmates we did not identify any use of late-night bookings.

Another concern brought to our attention was that of 402 motions. A "402 motion" is a term that refers to *Utah Code* 76-3-402, which allows for reduction of charges if the punishment and crime are not synonymous. The specific concern was that counties might be taking advantage of the jail reimbursement program by pushing felony charges on inmates, so they could collect reimbursement while they were incarcerated. Once the inmate was released from jail, the felony charges would be reduced to misdemeanor charges. We found only one instance of the use of a "402 motion" in the sample of 300 inmates, and it appeared to be used for its intended purpose. Based on the sample evidence, it does not appear that counties are using the "402 motion" to overbill the state.

Counties Are Increasing Level Of Sophistication in Billing

The increase in billed days is not due to intentional overbillings. Rather, it has occurred because counties have learned how to better identify inmates who qualify for jail reimbursement. In the past, some counties have not been able to identify all the inmates in their jail who qualify for reimbursement because of poor inmate identification methods at the county.

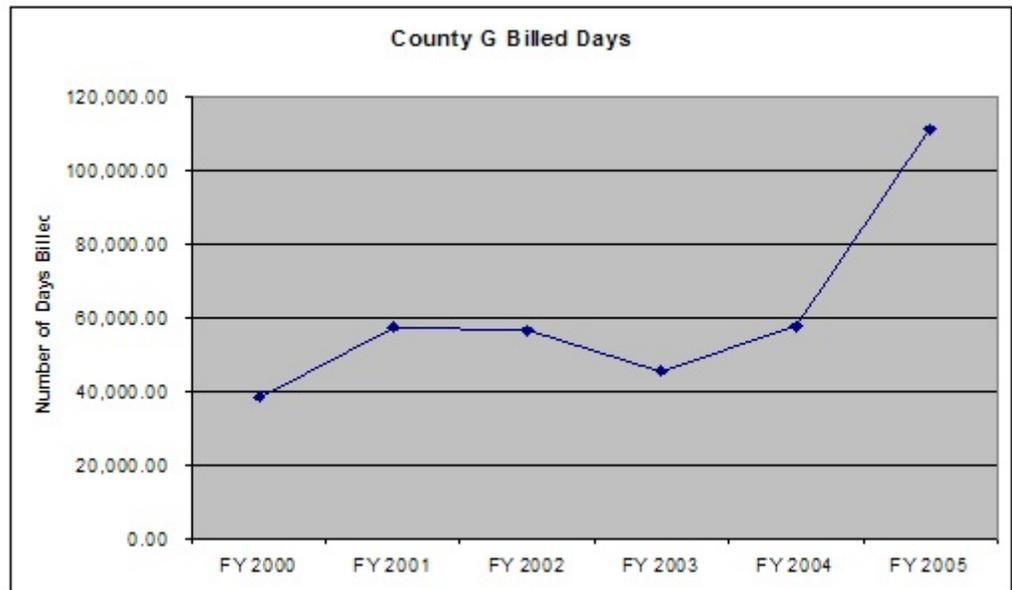
For example, County G underbilled the state in the past. In 2004, a billing clerk, with some help from UDC, implemented new procedures that allowed the county to more effectively track and identify inmates qualifying for jail reimbursement. Specifically, this clerk learned about an on-line court resource that helped him better identify the eligibility of inmates in the county jail.

Increased billing sophistication has led to an increase in billed bed days.

The result of using new resources to better identify inmates is that the county realized it had been significantly underbilling the state. Then, they began billing the state for the correct number of inmates in the jail. Since this county houses a large percent of Utah's jail reimbursement inmates, the state suddenly found a significant increase in bills to pay during fiscal year 2005. Figure 5 shows this county's billings for the last six years in terms of billed bed days.

Figure 5. County G's Billed Days Dramatically Increased. This chart shows that County G increased their billings by 93 percent in fiscal year 2005.

County G drastically increased their billings in FY 2005.



This county billed for 57,587 bed days in fiscal year 2004. In fiscal year 2005, this number jumped to 111,324, a 93-percent increase.

The possibility exists for other counties to improve their billing sophistication and consequently bill the state more.

Since underbillings still occur in some counties, the potential exists for another sudden increase in billings. Another increase in billings may occur as other counties begin implementing better research techniques. In fact, we believe that this will eventually occur in at least one other moderately-sized county. County I has recently held many of their billings until the last month of the fiscal year. Our sample revealed that County I underbilled for about 300 bed days.

Sudden Increase in Billing Results in Insufficient Funding. The natural effect of an unexpected surge in county billings is a shortfall in appropriated dollars because the funding is based on projections, which

become understated. The increase in County G's billings largely explains the shortfall the program experienced in fiscal year 2005. Analysts at UDC say it is very difficult to predict unexpected increases in billings that translate into revenue shortfalls. Consequently, it is possible that funding shortfalls caused by increases in billings could be experienced again.

However, we believe much of this phenomenon can be addressed with a thorough review of the controls within the counties. For example, counties should review the controls in their electronic databases to ensure that billings are terminated when the inmate leaves the jail. Also, as counties are increasingly learning about the resources available to them, the possibility of future unexpected billing increases is being diminished. Counties that are not utilizing all resources available to them need to be educated. In the next section we discuss ways that counties can assure they are properly billing for all eligible inmates.

Improvement Can Be Made to Reduce Billing Errors

While we found that collectively county billings are generally accurate, individually most counties can improve their billing accuracy through improved controls. Improved accuracy can also be achieved through more effective information gathering and training at the county level. Additionally, introducing some automation into the billing process could help abate billing error. We think that it is an opportune time for the department and the counties to carefully consider automation options. Improved accuracy and less billing error will create a more precise billing program, which should lead to more accurate appropriations through better funding projections.

Counties Can Institute Better Controls

Through our sample, we discovered that some of the billing errors could have been avoided if better controls were in place at the counties. We believe that several of the counties can do a better job in implementing and monitoring billing controls. Two examples where improved controls could have helped were found in County H and County G.

Increased controls and education within the counties will help smooth out unexpected increases in billings.

Improved controls at the counties will help correct some billing errors.

In an initial test of some older billings at County H, we found that the county had a modest overbilling rate. The county assured us that they had implemented new controls in the form of improved clerical review and better database tracking. We found, in our test of current bills, that indeed the overbilling problem was remedied; however, it had been replaced by a slight underbilling problem.

While conducting an initial test of County G's 2004 billings, we found that the county had 100 percent accuracy. However, as we looked at more recent billings we found a slight overbilling occurrence. As we analyzed the overbilling errors at this county we found that while this county changed their billing process to capture more eligible inmates, they neglected to put into place adequate procedures or controls that would detect and/or correct overbillings. For example, if an inmate was released for a period of time to an ineligible program and then brought back to the jail, we found that this county was not always able to detect this, consequently they continued to bill the state for the ineligible days.

Increased Information and Training Would Help Reduce Errors

Counties could provide more information about inmate status to the state. The department is at a disadvantage when verifying billings because it does not know when an inmate was released from jail. The counties could provide the state with either electronic access to their databases (two counties have already done this), or provide a hard copy of documentation of their databases that shows when an inmate has been released from jail. This process would be similar to that used by the audit team to verify the number of days for which an inmate was eligible for reimbursement. Since several counties already submit commitment papers and court judgements as proof of inmate eligibility, submitting a "release screen" would not be particularly onerous.

Training at the county level also needs to be expanded. We found that most counties provide little, if any, training to their billing clerks. Many of these clerks lack written policies or procedures that could help them perform their duties. As a result, turnover at the counties can potentially put the reliability of the billing process in danger. Without written policies and procedures, billing clerks could potentially continue to perpetuate mistakes and problems of their predecessors. We found some evidence of this while testing county billings. Furthermore, if

Counties can help the department better verify billings by providing them more information.

Improved training to billing clerks on proper billing procedure can help reduce billing error.

counties do not know what questions to ask the UDC, they may not receive full instructions because the state tends to provide training on a question-and-answer basis.

We acknowledge that the counties will most effectively be able to train and review their controls contingent on the department giving them policies. Recommended improvements for UDC will be addressed in Chapter III.

Automation May Solve Some Billing Problems

In addition to correcting some of the controls already discussed, automating the billing process at both the county and state levels may help resolve some of the current billing errors. Because time constraints did not allow us to study specific automation solutions, we recommend this area for further review because we believe that automation may be of value to the billing process.

In our limited work, we did learn from UDC and the Commission on Criminal and Juvenile Justice (CCJJ) officials that two or three automation solutions may already be in place. However, these automation solutions would have to be adapted to allow for jail reimbursement billing. Therefore, we recommend that the UDC, along with the counties, study the following automation solutions and any others that seem appropriate.

- **State Offender-Track Database (O-Track).** UDC officials have told us that the O-Track system operated by the state may have the necessary information and capabilities to automate the jail reimbursement program.
- **Utah Criminal Justice Information System (UCJIS) and Victim Information and Notification Everyday (VINE).** An official at CCJJ told us that these systems could likely help the department and counties automate the billing process. Some programming details need to be worked out.

Using more automation in the billing process may help reduce billing errors.

Recommendations

1. We recommend that the counties seek ways to reduce errors in their billings. Specifically the counties should:
 - Develop and review sufficiency of controls in their jail management and reimbursement databases.
 - Provide written policies on proper billing practices to their billing clerks.
 - Develop specific training on jail reimbursement rules and practices that can be used to train billing clerks.
2. We recommend that the Department of Corrections and the counties consider ways that the jail reimbursement program could be either fully or partially automated.

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Chapter III

Jail Reimbursement Policies And Governance Can Improve

The UDC needs to resolve policy questions and improve governance over the jail reimbursement program.

Many outstanding policy questions exist in the state's jail reimbursement program, which need to be addressed and clarified by the Utah Department of Corrections (UDC or department). These policy questions have led to inconsistent application by counties who participate in the program. The department can also improve their governance over the jail reimbursement program by:

- Increasing their ownership of the program by establishing clear program objectives
- Utilizing their authority over the program through policy review and rulemaking
- Developing performance measures for the program

Many Outstanding Policy Questions Exist

There are not sufficient policies governing the jail reimbursement program. Consequently, a degree of confusion exists in the program. UDC needs to address policy deficiencies through collaboration with counties who participate in the jail reimbursement program.

Several Policy Questions Need Resolution

During our testing of county billings we found that there were many policy questions that needed resolution.

As we conducted our random sample (discussed in Chapter II), we found that most counties had policy questions and concerns that UDC had failed to fully resolve. We also found that some counties believed that they fully understood the program, but further investigation revealed they had never asked certain questions to get verification. This has led to inconsistencies among the counties.

For example, some county clerks who are persistent in asking questions about unclear policies may be granted reimbursement, while other counties will not receive reimbursement because they never pressed

for it due to unclear policies. Figure 6 lists policy questions that need to be formally clarified through internal policy or administrative rule.

Figure 6. At Least 10 Policy Questions in Jail Reimbursement Need Clarification. This list of questions was generated jointly by the UDC, county billing clerks, and by the audit team after discovering inconsistencies in billing. Other policy questions may also exist, which would need clarification.

We were able to identify at least 10 policy questions that need to be addressed.

1. Should the department reimburse counties for juvenile offenders who, after becoming adults, serve time in a county jail on conditions that qualify the county to seek jail reimbursement funds?
2. If a judge sentences an individual to consecutive cases more than 365 days in jail, should the department only pay the days up to 365, or should they not pay any of the days because a condition of the jail reimbursement program is that an inmate serves 365 days or less in a county jail?
3. What should the counties and the department use as the official record: Court-Exchange available on-line through the state court's website, or the Official Judgement and Commitment?
4. Should the counties get reimbursed for an inmate when the inmate's probation is terminated unsuccessful?
5. Should electronic monitoring be eligible for reimbursement at a lower rate because it is recognized in the **Utah Code** as a form of probation?
6. Should counties get reimbursed for an inmate who serves time in a county jail under a plea in abeyance sentence?
7. Do counties get reimbursed when an inmate is being held for an Immigration and Custom Enforcement (ICE) hold?
8. Do counties get reimbursed for an inmate whose probation is being supervised by an entity other than Adult Probation and Parole (AP&P)?
9. Is it official policy or just an understanding that the counties should bill for the first day of an inmate's incarceration and not the last day?
10. What exactly constitutes a direct cost eligible for reimbursement for housing an inmate in **Utah Code** 64-13c-101(1)(a)?

For all counties to receive equitable and consistent application of policy governing jail reimbursement, the questions listed in Figure 6 need to be formally addressed. When counties are not clear on exactly what qualifies for reimbursement, an uncertainty exists in the program which often translates into billing errors and inconsistent application. A few,

more specific, examples from Figure 6 will be detailed later in this chapter.

Policies Can Be Better Developed and Communicated

Unless policies are clarified, questions will continue to perpetuate. Therefore, the department should improve their communication to the counties by ensuring that all counties have equal access to new policies. As well, the department, in the future, can also do a better job of anticipating and responding to unasked questions which lead to policy decisions. We did find that the department in the past has done a good job of answering county questions when they were asked. We believe that improvements in communication can partly be accomplished through agency rulemaking, which is discussed later in the chapter.

Process Could be More Collaborative. One concern the department has with governing the program is that they do not want the counties to perceive their governance as too overbearing or harsh. The department carefully guards their relationship with the counties because of the need for contracted beds in county jails because the department relies on jail contracting for a percentage of bed space for inmates under their responsibility. However, we believe that if the department seeks a more collaborative approach with the counties by involving them in the governance process, they can protect their relationships with the counties. Specifically, the department can encourage counties to provide public comment when proposing a new policy.

In the past the department has not directly informed the counties when a new policy has been decided upon. Instead the department has only posted a proposed rule change in the state digest and placed a newspaper ad. To make all policies open and evident to the counties, the department could consider establishing a link on their Internet page that is devoted to policies and procedures of the jail reimbursement program. This would ensure that all counties have equal access to the same information.

The department should ensure all counties have equal access to policies once they are developed.

The department could more proactively involve the counties when policies are being developed.

Outstanding Policy Questions Have Led to Inconsistent Application

As mentioned, the department creates inequity among counties when they fail to determine jail reimbursement policy and communicate it clearly. We found several examples of inconsistent policy while conducting our review of county billings; four examples (three of which were previously included in the list of 10 policy questions in Figure 6) are highlighted in this section:

- Probation eligibility
- Reimbursement for juvenile offenders
- Drug court reimbursement
- Deadlines for submitting financial information

Eligibility of Some Types of Probation Has Been in Question

It has not always been clear—and for some counties it is still not absolutely clear—if counties can get reimbursed for inmates sentenced to probation authorities other than Adult Probation and Parole (AP&P). Other probation authorities could include bench (court) probation or certain county-sponsored probation entities. This question is still outstanding because the department has not formally adopted a policy in rule.

The department initially set out to clarify this issue by sending out a memo on June 30, 2003 to all counties stating that inmates' probation must be supervised by AP&P to be eligible for reimbursement. The memo states, "if sentencing of an inmate is not to the Department of Corrections (AP&P), they are outside the reimbursement realm."

Upon receiving this memo, one county sought clarification from their District Attorney's office. The District Attorney wrote an opinion on July 16, 2003 concluding that the state should reimburse the county for other approved forms of felony probation.

After receiving the county's opinion, the department then asked the State Attorney General's office for a legal opinion. The Attorney General concurred with the District Attorney. The Attorney General's Office

Inequity exists among the counties when the department does not fully communicate.

It is not entirely clear to all counties if they can seek reimbursement when an inmate is supervised by a probation entity other than AP&P.

concluded that the “department is under a mandatory obligation to reimburse counties for these [other probation] costs.”

The UDC then started reimbursing the cost of housing inmates whose probation was supervised by an entity other than AP&P. However, not all the counties immediately learned about the change, and some counties still may not fully understand it. We believe the department should have utilized their rulemaking authority by publishing this policy in an administrative rule so a more equitable distribution of dollars could have occurred, because some counties could have billed for other kinds of probation besides AP&P.

Reimbursement for Juvenile Offenders Is Not Consistent among Counties

One county has recently raised an issue with the department over the reimbursement status of juvenile offenders who serve time in a county jail. This county argues that they should be reimbursed for juveniles who later become adults and serve commitments in the jail. The county, trying to plea their case, obtained a legal opinion from their county attorney.

The case that the county brought to the department involved a juvenile who was originally sentenced in juvenile court to a juvenile detention center. The juvenile was released from the juvenile center and placed on probation. The juvenile who had turned 18 violated his probation and was sentenced to jail for 30 days by the juvenile court.

The county attorney argued that the state should reimburse the county for this inmate because the inmate falls under the guidelines of the jail reimbursement program laid out in the *Utah Code*. The county attorney’s opinion states:

The reasonable argument and conclusion is that he in fact is an adult serving the 30 days as a condition of continued probation and therefore comes within both Title 77 and section 64-13c-201 [of the *Utah Code*] even though the order was issued by the Juvenile Court.

After receiving the county attorney’s opinion, the department sought a legal opinion from the Attorney General’s Office, but the opinion has not yet been received by the department.

The lack of a policy governing juvenile offenders has resulted in inequities among the counties.

We do not question the process that the department is utilizing in this scenario. However, we do question the inconsistent application the department utilizes with each county. For example, during our testing of county billings, we found an instance where the department had already reimbursed a county for a juvenile detained in that county's jail.

Drug Court Reimbursement Needs Clarification

A few months ago, the department began reimbursing counties for inmates sent to drug court. The larger counties that utilized drug court mostly understood that they could receive reimbursement for inmates incarcerated under this program. However, the department never officially clarified which aspects of drug court were eligible; they never made the policy official through the rulemaking process, and they never published the information to all the counties. Rather, it appears the department assumed that all the counties knew the rules governing reimbursement for drug court.

Consequently, a smaller county that began drug court several months ago did not know the inmates coming from this court were eligible for reimbursement. (It had never occurred to the smaller county to ask if they could bill for these inmates.) The newer staff at the county had no information distributed to them that would have let them know that these inmates qualified for reimbursement.

Furthermore, even some of the counties that do understand that they can seek reimbursement for inmates incarcerated through drug court do not understand exactly when and how an inmate qualifies. For example, some counties do not understand that if an inmate's sentencing was originally set as a plea in abeyance but later changed to a guilty plea, then the inmate is eligible for reimbursement.

UDC Should Reevaluate Deadline for Receiving County Financial Information

In a related matter which is more procedural than programmatic, the department informed us that most counties do not provide year-end financial statements by the first Friday in March as required in *Administrative Rule R251-113-4(1)*. Since the counties end the fiscal year on December 31, their books are not completely closed until March or

UDC has not formalized their policy regarding reimbursement for inmates in drug court. Not all counties were immediately aware of the policy.

The department should review its deadline for counties' submittal of financial information.

April of the following year. The department should consider extending the deadline until mid-April, so counties can complete their accounting and get more timely data to the department. It is important for UDC to obtain timely data because they base their accounting process on the date that counties are supposed to deliver the financial statements.

UDC Can Improve Governance Over Jail Reimbursement Program

The department can improve their governance of the jail reimbursement program through greater attention to the established best practices in governance. For example, the department should set clear direction for the jail reimbursement program and show greater ownership. As well, the department could more fully utilize their rulemaking authority to govern the program which could help remedy the outstanding policy questions already discussed. Finally, the department could improve their collection of essential data elements in order to set performance measures for the administration of the program.

Better Direction for the Program Can Be Established

We have been told by department officials that they do not view the program as one of their own; rather, they see it as a legislative program over which they have been given administrative charge. The department views their role in the program as a pass-through agency that audits the counties' bills and then passes funds onto the counties. Consequently, they have not established clear direction for the program.

By contrast, the department has specific contracts with each county for the jail contracting program discussed in Chapter I. The department states that they administer the jail reimbursement program with existing resources within the same division that oversees the jail contracting program. The department has indicated they would like to see the program administered by the State Office of the Courts or the Utah Commission on Criminal and Juvenile Justice (CCJJ). We do not believe another agency could administer the program as efficiently as UDC.

The department has not established a clear mission or objectives for the program. In response to our concern, the department has pointed out

The department needs to improve its governance of the jail reimbursement program.

The department needs to establish direction and a mission for the program.

We acknowledge that the department is in a difficult position when administering the program, but they still have an obligation to fully govern the program.

the challenge of taking ownership of the program, particularly the funding aspects. The department feels they have been placed in a position where appropriations for jail reimbursements compete with other departmental appropriations even though the jail reimbursements are merely passed through to the counties. The department believes that it is more appropriately the role of the counties to plea their case for jail reimbursement appropriations before the Legislature, yet the jail reimbursement appropriation is in the department's budget. While we recognize that the department has been placed in a difficult position of administering a program they do not see as a natural fit, we believe they still have an obligation to fully administer the necessary policies and procedures.

Overall, we believe that the department can take more ownership of the program and seek a more proactive role when administering the jail reimbursement program. One way to bolster the direction of the program is through increased use of administrative rulemaking discussed in the next section.

Policies Can Be Increased Through Rulemaking

The department needs to bolster their governance of the program through the rulemaking process. *Utah Code* 64-13c-303(2)(b) grants the department authority by stating, "The department shall by rule establish procedures for the distribution of reimbursement from the program."

Even though the department has authority to administer the program, they have not fully done so. Since the jail reimbursement program was changed in 2002, the department has only updated their administrative rules once. The one update in the rules occurred after legislative intent language directed them to do so. However, in this update, only two policy clarifications were included in the rule. These two clarifications did not address some of the concerns that were present at the time.

Another opportunity the department had to update their rules came about seven months after the first update in a mandatory five-year review. All administrative rules are required to go through a review process within five years of the rule's original enactment or last five-year review. This would have been another opportunity for the department to govern the program and clarify policy through the rulemaking process. However, the

The department has not fully utilized their authority to administer the program through the development of administrative rules.

rule went unchanged. Again, during this rulemaking and rule review process, some of the issues presented earlier in Figure 6 existed and were in need of clarification, yet were not clarified.

Increase Data Collection Will Help Establish Performance Measures

Increased data collection by the department will help them improve their management of the program.

Our review of the department's administration of the jail reimbursement program revealed that the department could better utilize data in order to improve their management of the program. Better use of data at the department can translate into establishing performance measures for monitoring needed improvements in the program.

The department has implemented an audit function that reviews the legitimacy of county billings. While we acknowledge the department's audit efforts, we believe the audit could be expanded to collect sampling data similar to that collected during this audit and discussed in Chapter II. The department could also use information on error rates as performance measures, so it can follow up on program weaknesses. Without this, (or other measures) they do not have a way to measure performance.

We credit UDC for its current audit function of the jail reimbursement program. However, this function could be expanded.

With data on error rates at specific counties, the department will also better understand where problems exist in the program. As well, good data that accurately reflects program operations will assist in the development of performance measures for the program. Further, the department can better establish what billing error rate they believe is acceptable.

The department has told us that to increase their involvement in the jail reimbursement program they would need more staff. Currently, the department funds one position at \$48,000 who works on the jail reimbursement program. In addition to this one position, the department believes that they would need two additional FTEs at the cost of \$102,000, for a total cost of about \$150,000 including salary and benefits. This appears to be reasonable in that the jail reimbursement program funded at 70 percent exceeds \$12 million in fiscal year 2007.

In summary, we believe UDC can become more involved in governing the jail reimbursement program. This greater involvement can be accomplished through more proactive policy development and

distribution and through a greater sense of ownership, which in turn can lead to a more effective jail reimbursement program for Utah.

Recommendations

1. We recommend the Department of Corrections formalize their policies in the rulemaking process and then develop effective means of distributing the policies to the county.
2. We recommend that the Department of Corrections improve their governance over the jail reimbursement program by:
 - Establishing a mission and objectives for the program.
 - Establish performance measures for the program.
3. We recommend that the Legislature consider the department's proposal for additional funding to administer the jail reimbursement program.

Chapter IV

Legislature May Want to Review Funding Policy

Jail reimbursement funding options exist if the Legislature decides to review them.

If the Legislature decides to change the current funding policy of the jail reimbursement program, several options are available for review. The current funding policy reimburses 70 percent of the counties' core rate expenses. To fund the program at 70 percent in fiscal year 2007, an appropriation of about \$12.6 million will be required, which represents an increase of 31 percent from fiscal year 2006. If the Legislature decides to fully fund bed days and medical and transportation costs, an additional appropriation of about \$8.6 million (5.4 million for bed days plus 3.2 million for medical and transportation costs) in ongoing funding in fiscal year 2007 will be required.

We found that the counties have received 70 percent of their core costs for two out of the last three years. However, due to increased billing sophistication by one county, a significant increase in bed days is now being billed, which will require an increased appropriation to maintain the 70-percent policy. A review of other intermountain states shows that Utah's 70-percent policy is unique. Nevertheless, the Legislature should decide what the most appropriate reimbursement policy is for the state.

Funding Sufficient in Most of Recent Years

The jail reimbursement program was fully funded in fiscal years 2003 and 2004. However, it was short in fiscal year 2005 because, as discussed in Chapter II, an unexpected billing increase by one large county caused billings to come in much higher than what was expected and funded. There may also be a funding shortfall for fiscal year 2006. Further, policies governing the payment of medical and transportation costs have been unclear, which has resulted in inconsistent payment of these expenses for jail reimbursement inmates.

The program has been funded at the 70 percent level in most of the recent years, but medical and transportation costs have not received funding at 70 percent.

Core Rate Funded Two Out of Last Three Years

The jail reimbursement program has been funded at 70 percent for two out of the last three years.

The dollars appropriated by the Legislature in fiscal years 2003 and 2004 were sufficient to fund the jail reimbursement program at the legislatively-set rate of 70 percent for “core inmate incarceration costs,” or, in other words, 70 percent of the cost to house an inmate (bed days). This is based on the assumption that dollars appropriated went first to cover core rate costs and then to medical and transportation expenses. Based on this assumption, some dollars were left that could have been used to offset medical and transportation costs in fiscal years 2003 and 2004; these costs will be shown in the next section.

Figure 7 shows that appropriated dollars were sufficient to fund the program at 70 percent in fiscal years 2003 and 2004, with some dollars available for medical and transportation payments. However, fiscal year 2005 appropriations were short by \$2.3 million.

Figure 7. Seventy Percent of Core Rate Funded in Fiscal Years 2003 and 2004, but not in FY 2005. The jail reimbursement program was funded in fiscal years 2003 and 2004 assuming that appropriated dollars went to bed days before medical and transportation costs. However, in fiscal year 2005 the 70-percent funding goal was short \$2.3 million.

| | FY 2003 | FY 2004 | FY 2005 |
|------------------------------------|---------------|---------------|--------------------|
| Appropriated | \$ 8,515,900 | \$ 9,515,900 | \$ 9,081,000 |
| 70% Funding | 8,290,342 | 8,594,984 | 11,398,961 |
| Medical and Transportation Dollars | 225,558 | 920,917 | 0.00 |
| Unmet Core Rate Objective | \$0.00 | \$0.00 | \$2,317,961 |

Fiscal year 2005 shortfall largely driven by one county’s billings. Improvements to one large county’s billing practices enabled the county to identify a greater number of inmates eligible for reimbursement, which we believe was a legitimate improvement. But, this increase contributed to a funding shortfall in fiscal year 2005, as was discussed in Chapter II.

The shortfall experienced in FY 2005 was largely caused by one county’s increased billings.

Current Funding For Fiscal Year 2006 Appears Insufficient.

Funding for projected core rate expenses during the current fiscal year appears to be short. The department is recommending a supplemental of about \$3.5 million to cover the projected core rate shortfall. This number includes some projected growth in the program, which may be slightly inflated. We believe the supplemental should be closer to about \$2.2 million. As well, more ongoing dollars will need to be appropriated for fiscal year 2007. As will be shown in this chapter, additional dollars would also be needed if the Legislature decided to fund any portion of medical and transportation costs.

Medical and Transportation Costs Have Not Been Fully Funded

The *Utah Code* does not clearly say if medical and transportation costs should be funded. However, the Legislature clarified much of the confusion with medical and transportation payments when they passed intent language in the 2004 General Session. The intent language directed the UDC to only reimburse medical and transportation costs, “as remaining funding allows and up to the rate of 70 percent.”

The primary reference in the code to medical and transportation costs only states that a rate should be negotiated. The code never stipulates that the rate should, or should not be paid. *Utah Code* 64-13c-302(2) states:

Each county shall negotiate directly with the department to establish reimbursement rates for providing transportation services and medical care for inmates housed under Section 64-13c-201.

Figure 8 shows the available funding for medical and transportation costs, assuming that dollars went first to pay for core rate costs.

Figure 8. Funding Available For Medical & Transportation Costs.

Medical and transportation costs have not been consistently reimbursed during fiscal years 2003 to 2005.

| | FY 2003 | FY 2004 | FY 2005 |
|-----------------------|------------|------------|---------|
| Available Funding | \$ 225,558 | \$ 920,917 | \$ 0 |
| Actual Percent Funded | 12% | 47% | 0% |

Legislative intent language clarified much of the confusion with medical and transportation payments.

Counties have not received 70 percent funding for their medical and transportation costs.

Because of a predicted shortfall to core rate funding, it also appears that there will not be any funding for medical and transportation costs in fiscal year 2006. The Legislature may want to fund more of these medical and transportation costs in the future. We will provide a cost estimate later in the chapter.

Current Jail Reimbursement Program Is Unique

Utah's current funding policy of reimbursing counties 70 percent of their direct costs is unique among other intermountain states. We found that the funding options employed by other intermountain states fall into three categories:

- Two states reimburse counties for their direct costs of housing felons sentenced to county jails.
- Three states do not reimburse their counties for housing felons sentenced to county jails.
- One state places all convicted felons in state prison.

The Legislature may decide to follow one of these three options, or they may decide that some mitigating factors exist that justify a different reimbursement.

Utah's Jail Reimbursement Program Not Common in Other States

When comparing Utah's jail reimbursement program to programs of surrounding states, we discovered significant differences. Only two of the six surrounding states reimburse their counties for holding state-convicted felons. But those two states (New Mexico and Wyoming) reimburse 100 percent of the direct costs, unlike Utah's 70-percent reimbursement. Three states do not reimburse their county jails for inmates convicted of state crimes, and one state does not utilize its counties' jails for convicted felons.

All six surrounding states convict felons based on their criminal codes. Five of the six surrounding states sentence some state-convicted felons to county jails (Nevada does not). However, only two reimburse their

The current funding policy for the program is unique among other intermountain states.

counties for the inmate costs. Figure 9 summarizes the intermountain states' policies regarding this issue.

Figure 9. Utah Pays Counties More than Some States. Utah's reimbursement policy is more than states that do not reimburse, but less than those that do reimburse.

| State | Felons Convicted on State Statute | Sent to County Jails | Counties Reimbursed by State | Reimbursement Rate |
|-------------|-----------------------------------|----------------------|------------------------------|--------------------|
| Arizona | yes | yes | no | n/a |
| Colorado | yes | yes | no | n/a |
| Idaho | yes | yes | no | n/a |
| Nevada | yes | no | n/a | n/a |
| New Mexico | yes | yes | yes | variable |
| Utah | yes | yes | yes | \$29.62 |
| Wyoming | yes | yes | yes | \$45.00 |

Most states are similar to Utah in sending state convicted felons to county jails. All intermountain states convict felons on state statute.

Two Intermountain States Reimburse For Felons Sentenced to County Jails. The two other states that reimburse their counties for felons sentenced to county jails do so at the full rate of direct costs. Wyoming's reimbursement rate is the same for each of their counties, while New Mexico reimburses each county the exact amount of direct costs for the particular county.

Three Intermountain States Do Not Reimburse for Felons Sentenced to County Jails. Arizona, Colorado, and Idaho are unlike Utah in that they do not reimburse county jails for inmates specifically sentenced there. For example, Idaho law states,

Any district judge or magistrate may order a person confined or detained . . . in any county or municipal jail. . . . all persons, officers and officials in charge of a jail or confinement facility shall accept [the] person. . . .

If the Legislature determined that the State of Utah has no financial obligation to the counties that hold inmates sentenced to their jails, it would be consistent with these states policies.

One Intermountain State Sends All Felons to State Prison.

Nevada's incarceration policy is to send all convicted felons to prison. This option would be very costly for Utah. Sending all felons to prison would translate into increases in both the daily housing rate and in extra construction costs. The daily rate would increase from the current core rate of \$29.62 to the prison rate, which is about \$60 a day. In fiscal year 2007 that would have translated into an additional appropriation of about \$13 million. In addition, UDC estimates that the cost of additional construction for additional prison spaces to hold about 1,200 inmates could be as much as \$130 million.

Utah's Jail Contracting Program Is the Most Comparable In-State Program to Jail Reimbursement. As mentioned in Chapter I, a significant difference between the two programs is the rate at which counties are reimbursed by the state. The jail contracting program reimburses counties 100 percent of the core rate, while counties only receive 70-percent of the core rate in the jail reimbursement program. Also in the jail contracting program the state covers all transportation and medical expenses themselves. Specifically, the UDC provides inmate transportation and sends medical personnel (or brings the inmate back to the prison) to the county jails for inmates held under a jail contract. Therefore, the counties do not incur any medical and transportation costs for jail contracting individuals.

Both programs involve convicted felons being physically housed in county jails. However, inmates in the jail contracting program originate from the prison and are later sent to jail. However, in both instances, the inmates have broken state law and have been convicted by the state.

Factors May Explain Utah's Lower Rate for Reimbursement

The Legislature may feel that there are some mitigating factors that justify the 70 percent funding level. One possible mitigating factor is that the state pays for all district courts in the state. While the state also collects all revenue associated with those courts, the revenue has been insufficient to cover all the costs of the courts.

The jail contracting program is the most comparable in-state program. The contracting program fully reimburses counties for their direct costs.

The Legislature may want to consider mitigating factors if they decide to change the current funding policy.

Another possible mitigating factor is that the state pays the cost to train county correctional officers. Our brief review of these costs shows that the direct cost to train all county correctional officers in a year is only about \$32,000. The Legislature may want to take into account mitigating factors, as well as their desired policy objectives, when considering whether there ought to be an increase to the core rate for jail reimbursement.

Cost of Funding Program Depends on Legislative Policy

The Legislature may want to consider changing the current funding policy of the jail reimbursement program by either increasing the percent paid to the county for bed days, and/or pay the counties for all or some portion of their medical and transportation costs. If the Legislature decides to fund bed days and medical and transportation costs fully, it would require about \$8.6 million more in ongoing funding in fiscal year 2007. This number could increase in the future if billed bed days increased. However, the Legislature may decide to fund only a percentage of these options, or follow the policy of some other states and forgo reimbursing the counties for housing felons sentenced to jails.

Figure 10 shows the costs associated with funding the program at the current policy and what additional costs other funding options would bring. Cost estimates in Figure 10 are based on fiscal year 2007 bed day projections.

Depending on Legislative policy objectives, the Legislature may want to change the current funding policy.

Fully funding the jail reimbursement program with medical and transportation costs would require an appropriation of about \$21.2 million in FY 2007.

Figure 10. Options Could Increase Funding to Program. The following funding options are based on projections for fiscal year 2007. The Legislature could choose to maintain current funding levels or choose one or both of the other funding options listed.

| | FY 2007 Estimated Costs | Cumulative |
|--|-------------------------|---------------------|
| Amount Needed to Fund Program at Current Policy of 70% | \$12,600,000 | \$ 12,600,000 |
| Additional Funding Options | | |
| Additional Appropriation Needed to Achieve 100% of Core Rate | 5,400,000 | 18,000,000 |
| 100% Medical and Transportation | 3,200,000 | \$21,200,000 |
| Total Cost of Funding Options | \$8,600,000 | |

The total appropriation to the jail reimbursement program could increase to as much as \$21.2 million if the core rate and medical and transportation costs are funded at 100 percent. In other words, fully funding the core rate and medical and transportation would cost an additional \$8.6 million. We also calculated the cost for including indirect expenses to be approximately \$4.1 million. This amount is not shown in Figure 10 but will be discussed later.

Funding Full Core Rate Would Increase Appropriation by \$5.4 Million Annually

If the Legislature decided to pay the counties 100 percent of the core rate, the annual appropriation to the jail reimbursement program would need to increase by about \$5.4 million a year. The projected bed days in fiscal year 2007 are estimated to be about 423,540, or nearly 39,000 more bed days than what was billed in fiscal year 2005 (the last year actual billings are known). To fund the projected 423,540 bed days at the current full core rate of \$42.32, the Legislature would need to fund about \$18 million dollars to the program.

Paying the counties 100% of their direct costs in FY 2007 would require an appropriation of about \$18 million.

However, as discussed earlier, the Legislature may decide that other mitigating factors exist—in which case the Legislature could maintain the current funding policy or change the program again to reflect a more appropriate funding percentage.

About \$3.2 Million More Would Be Needed to Fully Fund Medical and Transportation Costs

If the Legislature decides to fund medical and transportation fully, it will require an additional appropriation of about \$3.2 million in fiscal year 2007. This number is based on individual county medical and transportation rates that were in effect the last time the core rate was changed, not the current proposed rates.

In our survey of other intermountain states we found that some of them do not pay for medical and transportation costs for inmates sentenced to county jails. However, historically Utah’s policy has been to pay these costs, but legislative intent language in January 2004 directed the department to only pay for medical and transportation costs after bed days had been funded.

Funding Indirect Expenses Not a Common Practice

Funding indirect costs would require approximately an additional \$4.1 million annually to the jail reimbursement program. Data collected from counties that contract with the federal government showed that the federal government was reimbursing the counties an average of \$52.01 a day. Thus, funding indirect costs adds approximately \$9.69 a day (\$52.01 minus \$42.32) on top of direct costs.

We found that only the federal government reimburses county jails for indirect expenses such as: building depreciation, major equipment depreciation, maintenance, and communication systems. Our survey of intermountain states showed that surrounding states do not pay for indirect costs. Therefore, criteria from other states does not support the payment of indirect costs.

In summary, the Legislature has funded 70 percent of the core rate in past years, but largely due to increased billing sophistication by one county, more bed days are now being billed, which will require an

Other intermountain states do not pay for medical costs or transportation costs for inmates sentenced to county jails.

Only the federal government reimburses for county jails indirect costs. Other intermountain states do not.

increased appropriation to maintain the 70-percent policy. Further, the Legislature may decide to change the current funding policy by increasing or decreasing the percentage paid to counties.

Recommendation

1. We recommend that the Legislature consider reviewing other funding policies for the jail reimbursement program.

Appendix

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Appendix A

Comparison Between Proposed Core Rate and Approved Core Rate.

This figure is a re-creation of data that was presented by UDC in the FY 2007 Core Rate Setting Meeting.

| Fiscal Year | Proposed Core Rate | Legislature Approved Core Rate |
|-------------|--------------------|--------------------------------|
| 2000 | \$ 37.14 | \$ 38.00 |
| 2001 | \$ 43.07 | \$ 43.07 |
| 2002 | \$ 43.95 | \$ 43.07 |
| 2003 | \$ 42.32 | \$ 42.32 |
| 2004 | \$ 44.33 | \$ 42.32 |
| 2005 | \$ 45.25 | \$ 42.32 |
| 2006 | \$ 43.96 | \$ 42.32 |
| 2007 | \$ 43.10 | |

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Agency Responses



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

Department of Corrections

SCOTT V. CARVER
Executive Director

Christine Mitchell, Ph.D.
Director of Administrative Services

January 13, 2006

John Schaff
Legislative Auditor General

Dear Mr. Schaff:

The Department of Corrections concurs with the findings of this audit and appreciates the professionalism of the staff assigned to work with us. Corrections has comments on two points made in the audit.

1. On page 20, Figure 6, the auditors list 10 areas where Corrections should make rules to regulate the program. Corrections will make rules in the areas in which the statutes provide guidance and request statutory clarification in the areas which are unclear. Corrections will work with its advisors from the Attorney General's office to resolve these issues.
2. On page 27, the auditors have suggested that Corrections' administration of the reimbursement program would improve through auditing, data collection, and jail staff training. The auditors recognize that complying with these suggestions will require additional oversight staff for Corrections. We agree with both of these findings.
3. On page 29 and following, the auditors commented that the jail reimbursement core rate was fully funded in FY'03 and FY'04. This conclusion is based on the understanding of the reimbursement obligation provided by intent language during the 2004 General Session. In FY'03 and FY'04, Corrections was operating under a different understanding of the statute and had reported shortfalls in funding for those years. Corrections reported that 62.4% of the cost was paid in FY'03 and 66.8% in FY'04. These percentages were based on the understanding that medical and transportation costs were to be paid at 70% of the negotiated rates. Legislative intent language later clarified that medical and transportation were only to be paid if funding remained at the end of the fiscal year.

We would like to thank you for the opportunity to respond to the findings of the audit and look forward to working with you and your staff in the future.

Sincerely,

Scott Carver
Executive Director

January 9, 2006

John Schaff
Legislative Auditor General
130 State Capitol
P.O. Box 140151
Salt Lake City, UT 84114-0151

Dear Auditor General Schaff:

These comments are submitted on your behalf as a response to a Performance Audit of Utah's Jail Reimbursement Program, dated January 3, 2006 from the Utah Association of Counties (UAC).

The Utah Association of Counties is generally pleased with the findings of the audit as they demonstrate the counties' compliance with the requirements associated with Utah's jail reimbursement program. We appreciate the hard work and dedication exhibited by your office in reviewing this issue. Your findings are the results of a process which was both fair and thorough.

The Utah Association of Counties would like to draw attention to several issues touched on in the audit, namely: 1) counties did not intentionally over-bill the state, and taken as a whole, actually under-billed; 2) the Utah Department of Corrections and county government need to work closely to administer rules and policies for the jail reimbursement program; and 3) the federal government's core incarceration rate is much higher than that of the state's.

Billing Errors are not Intentional

The performance audit found no intention from county government to over-bill the state. This finding does not surprise the Utah Association of Counties as it has repeatedly testified to this fact. The audit repeatedly identifies a significant increase in billings by one large county. This should not be construed as an attempt at over-billing but rather, as the audit recognized, the result of installing superior controls that more accurately identify incarceration days than in the past.

The Utah Association of Counties is disturbed with the finding that a 7 percent error rate exists in billing for the jail reimbursement program. The Association vows to work with your office and the Department of Corrections in reducing the error rate.

The Department of Corrections and the Counties Need to Work Together

The audit suggested that at several points during the process the Department of Corrections and the counties need to work closer together. The Utah Association of Counties pledges its full efforts to see that this happens. UAC is also dedicated to the effort of providing improved training to county and sheriff billing clerks to ensure that they understand what is required of them by law. Not only do the counties have a fiscal

interest in seeing that the jail reimbursement program is billed correctly, but we are dedicated to providing efficient government service.

Federal Government Core Rate is Higher than State's Core Rate

One particular reason behind the performance audit as described in the audit scope (page 6) was to compare Utah's policies and methodologies with those of the federal government in funding jail reimbursement. This was given little space in the audit, but it was pointed out that the federal core rate is considerable higher than the state's core rate. The core rate to house state prisoners in county jails is also considerably less than housing the same prisoners in state prison. As a result, the jail reimbursement program (as well as the jail contracting program) has been economically beneficial to the State of Utah.

The State of Utah, the Department of Corrections, and Utah's counties are partners in providing safe, secure correctional facilities for state prisoners. In a partnership any spirit of distrust is harmful to the process. The Utah Association of Counties again expresses its appreciation to the Legislative Auditor General's office in dispelling some of that distrust. We renew our commitment to the partnership and express our willingness to work with your office and the Department of Corrections to improve the billing process.

Sincerely,

L. Brent Gardner
Executive Director, Utah Association of Counties

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