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Office of the Attorney General

January 27, 2009

LEGAL MEMORANDUM

Ref: DOC 07-0267

TO: Director, Department of Corrections

FROM: Attorney General *ALM*

SUBJECT: Responsibility for Medical Costs Incurred By Detainees

In your Memorandum of March 28, 2007, you request an opinion regarding which agency of the Government of Guam must pay the cost of medical and dental treatment undergone by pre-trial detainees. Detainees are incarcerated while awaiting trial and have generally been treated differently from DOC inmates who have been convicted of crimes. Your request refers to an earlier opinion of this office dated September 13, 2000. That opinion must now be revised in light of intervening revisions to the law.

As the earlier opinion states, the government must pay for medical expenses incurred by persons awaiting trial. Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983). Of course, the individual detainee might have medical insurance and, if he does, the insurance should be used to pay his medical expenses. Also, the detainee might have coverage through the Medically Indigent Program or the federal government's Social Security program.

The opinion of September 13, 2000 stated that there was no Guam statute affixing responsibility for detainee medical costs to a particular agency. Thus, GMH had to "write-off" the medical bills of a detainee who died from natural causes at the hospital. However, P.L. 28-68, the Budget Act for FY 2006, amended 9 GCA 90.49 to read:

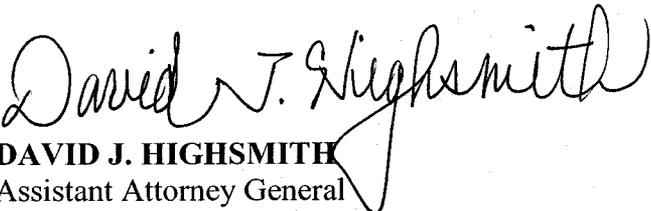
§90.49. Corrections Revolving Fund. There is hereby created within the Department of Corrections, a revolving fund called the 'Corrections Revolving Fund', which shall be established by the Department of Administration...

(a) All funds collected from the U.S. Marshal Service, the U.S. Immigration Service and the U.S. Bureau of Prisons for housing U.S. prisoners and detainees, confinement of military personnel...employees of the Department of Corrections for meals they purchase at the Department's dining facility and the sale of hot garbage (pig slop) to private persons shall be deposited into said Fund.

(b) Funds in the Corrections Revolving Fund may be used to purchase clothing for prisoners and detainees, foodstuffs for the dining facility,...medical/dental supplies, prescription and over-the-counter medicines, sanitary/hygiene supplies, and other pharmaceutical supplies for prisoners and detainees, including payment for prisoner-detainee maintenance costs in any off-island prison or medical institutions...

Although this statute speaks specifically about medicine, and does not refer to medical treatment, it nevertheless refers to treatment in off-island hospitals and clinics. We believe that the legislative intent is that this Fund be used to pay for medical treatment for detainees. The Fund is administered by DOA to pay expenses incurred by DOC to care for inmates. DOC should use the same physicians and facilities to treat detainees that it uses to treat inmates.

However, DOC does have authority itself to fix the problem by providing medical and dental treatment to detainees. The affected agencies may have to establish procedures to implement Section 90.49. However, the funds in the Correction Revolving Fund may be used to pay the cost of medical and dental treatment undergone by pre-trial detainees. Please contact us if you have additional concerns.


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