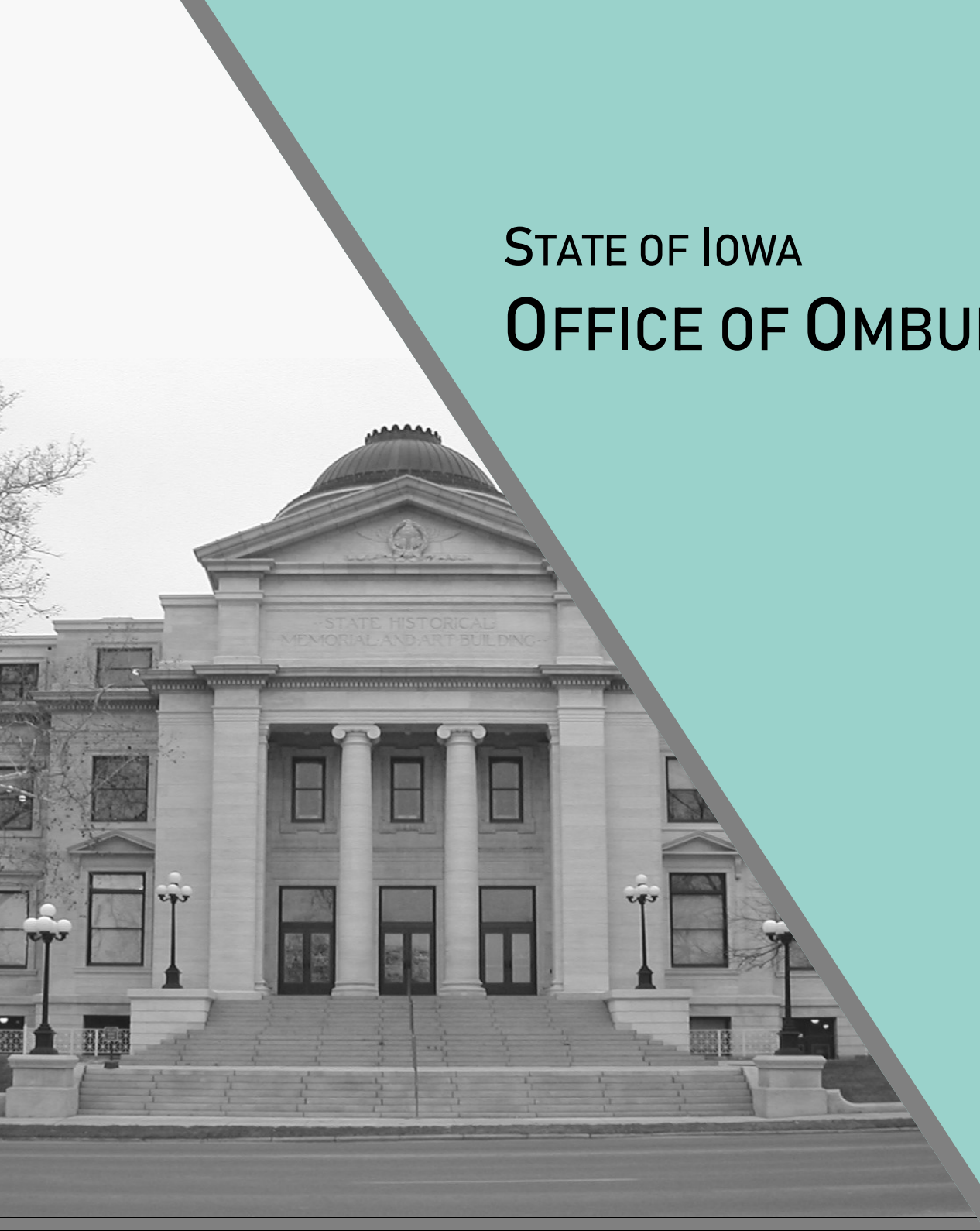

State of Iowa
Office of Ombudsman

2018 Annual Report

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This annual report about the exercise of the Office of Ombudsman functions during the 2018 calendar year is submitted to the Iowa General Assembly and the Governor pursuant to Iowa Code section 2C.18.

Ombudsman's Message

Kristie Hirschman
Ombudsman

Complaints to the Office of Ombudsman rose for the fifth straight year in 2018, to a total of 5,178 cases opened. That's a 5.7 percent increase from 2017, and a 29 percent increase in our annual caseload since 2013.

In order to keep up with this steady, steep rise in case numbers, I am always looking for more operational efficiencies. That includes confronting challenges that make our job more difficult, sap our resources, and hinder the timely resolution of complaints. To that end, I have developed a wish list:

1. I wish government agencies would be more transparent and explain their decisions to citizens.

One vivid example of an agency's resistance to transparency was portrayed in a public report we issued in December 2018 on the Iowa Public Information Board (IPIB). We determined in our report that IPIB had twice violated Iowa's Open Meetings Law. IPIB itself was reviewing a decision by the Burlington Police Department and Iowa Department of Public Safety not to release complete footage of an officer's body camera. (See Page 5 for a summary of the report.)

A push for greater openness and accountability was the reason the Iowa Legislature created IPIB in 2012. Yet IPIB refused to fully cooperate with our investigation, denying us access to closed-session records that would have helped resolve a citizen's complaint. IPIB apparently saw no irony in its obstinance while having pledged for seven straight years to be the state's most transparent government agency.

We encountered a similar wall of secrecy in our investigation of four state professional licensing boards. (Read our special report: *A System Unaccountable*.) It took my office more than three years to obtain the only records in the boards' possession that shed light on their decision-making, and we were able to do so only after a change in the law granted my office explicit access to those records. We concluded that the boards' embedded preference for secrecy fostered weak investigations by their staff and unprofessional conduct. It also resulted in frustration for citizens who were never told why their complaints were dismissed.

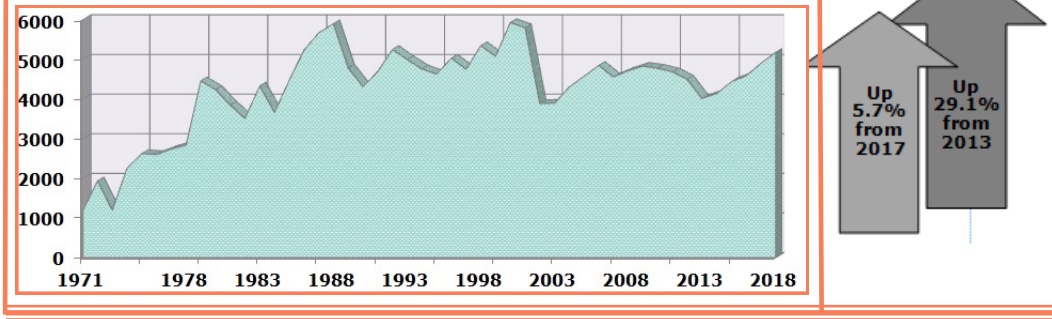
But changing the law has not changed the culture of secrecy surrounding licensing boards. These boards, through the Iowa Attorney General's office, now regularly raise the "deliberative process privilege" as a justification to deny us the closed-session records we clearly have access to under the law. Fortunately, to this point, some boards have chosen to voluntarily waive the privilege and share the records with us.

The malady of avoiding openness and accountability has also gotten worse at the Iowa Department of Corrections. Administrative law judges (ALJ) and wardens are raising a "mental process privilege" in their responses to our questions in even the most basic, non-controversial cases. A concern that could be resolved with a single-sentence reply from an ALJ now can get drawn out for weeks as we seek justification for how a disciplinary decision was processed.

Bottom line, the new norm is for state agencies, at the advice of the Attorney General's office, to claim either mental or deliberative process privilege when we make requests for closed-session records or ask how an ALJ reached a decision.

Unfortunately, resistance to our inquiries is not a new frustration for the Ombudsman's office. In the last three decades, we have had to go to the Iowa Supreme Court four times against the Attorney General's

Number of Cases Opened in 2018



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office to ask judges to enforce our subpoenas and allow us to question witnesses or access records. In every one of those cases, the Court has sided with the Ombudsman.

Of course, litigation takes time and utilizes valuable office resources. For us to do our work effectively, as the Legislature and public expect, my office must have broad access to government records. I polled my peers within the legislative ombudsman community to determine how they have dealt with legal challenges disrupting their operations. To my surprise, the offices I contacted have not had to go to court in the past three decades to enforce their authority. Resorting to court challenges is not only maddening, it is a waste of taxpayer money.

I simply do not understand why some government agencies consciously choose the path of resistance if they have nothing to hide. It is natural for my staff—and the citizens who are interested in our work—to assume a complaint has merit when a government official refuses to provide us with documents or answer our questions.

The Ombudsman was given the authority and responsibility to demand records and testimony in order to identify problems and resolve them. Make no mistake: Even in the face of government resistance, my office will continue to aggressively pursue the truth.

2. I wish government agencies would take our recommendations seriously.

We have continued to receive complaints about state licensing boards since we published a special report in 2017. Once again, citizens' primary frustration is a lack of explanation from the boards justifying their decisions. We recommended that the boards consider ways to offer complainants more information on their work, but we have seen little improvement. Some of the boards have told us that their hands are tied due to restrictive provisions in Iowa law. If the boards were truly concerned about being open with citizens, they could seek changes to the law. But that has not occurred. My office, meanwhile, has proposed language to legislators that would address these concerns and make the licensing boards more accountable to the people they serve.

In our 2015 critical report about the Department of Corrections and its inmate disciplinary system, we made nine recommendations for mostly systemic improvements. Despite multiple conversations with corrections officials since that time, a majority of our recommendations remain unresolved. We still have concerns about the fairness of inmate disciplinary hearings.

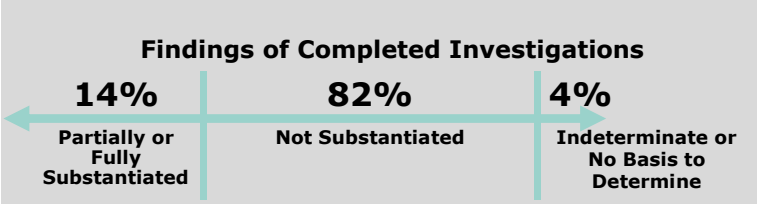
Regardless of the resistance my office receives from some agencies at the state and local levels, we remain doggedly persistent. During the writing of this column, we reargued a case that we first made in 2016 for an inmate —and this time, with the help of an open-minded prison official, we finally resolved the injustice.

When we make recommendations to a government agency, we do not do so casually or flippantly. They arise from good-faith fact-finding, research, debate, discussion, and consideration. Our aim is not to embarrass or burden the agencies we oversee; it is to make government more responsive and more effective.

If we believe strongly that a wrong needs to be righted, we will not forget and we will not go away.

3. I wish agencies did not view our inquiries as an annoyance.

My office takes seriously the words of former Governor Robert Ray, who in his 1969 inaugural address stated that an ombudsman "increases public confidence" in government officials "by ventilating unfounded criticism and rejecting unfounded complaints."



We substantiated just 14 percent of the complaints we investigated in 2018. Clearly,

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that means in the vast majority of cases we found that government agencies' decisions were justifiable and appropriate.

For even greater perspective, we declined to investigate 2,211 complaints filed with our office in 2018. It is common for us to decline a complaint when a citizen can reasonably be expected to exhaust an available avenue to resolve their problem or question a government decision. We also often decide not to make inquiries on matters where the reasonableness of the government action is apparent from the start. In those cases, we take pains to explain to citizens why the government can and did take the action they had.

We approach every case as a neutral factfinder. When we identify problems and propose resolutions, we are protecting agencies from liability and criticism. The Ombudsman should be viewed by government agencies as their risk manager. I am convinced that we save government agencies time and money. If government officials are serious about addressing problems and providing quality service, inquiries from my office should be welcomed. For those agencies that cooperate with my office, you have my sincere appreciation.

4. I wish board members and government officials would remember that they are public servants.

After we shared our draft of a critical report with the IPIB for comment, one of its members argued that it was not in our mutual best interests for us to publish the report. I did not appreciate the veiled threat. I also reasoned that we do not factor public perception into our decisions to investigate a complaint or publish a report of our findings.

The term "ombudsman" means "people's representative." As such, our primary concerns are whether our work will benefit our complainants and the public at large, whether the facts cry out for improvements, and what our statutory powers and duties allow.

State, city, and county officials also "represent the people" and should make decisions based on their constituents' best interests—not on protecting their agency's image or their own.

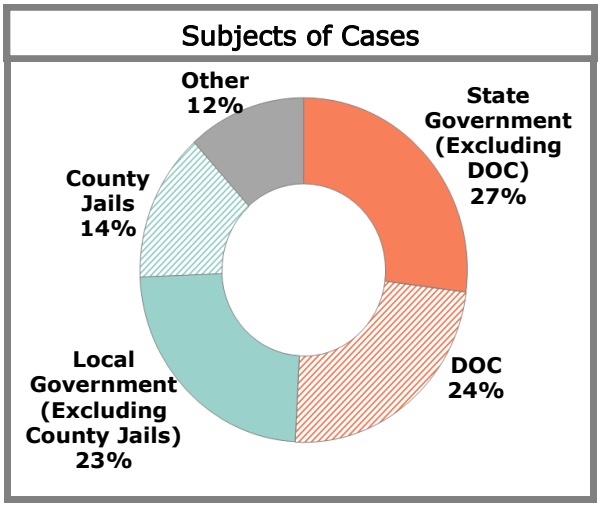
It should be a simple mission for all of us in government: Do the right thing, for the right reasons.

5. I wish I could figure out why complaints from inmates in county jails are skyrocketing.

The number of cases we opened against county jails last year increased by 24 percent. That followed an increase the year before of 34 percent. All told, 14 percent of all the complaints we received in 2018 concerned Iowa's county jails.

I surmised in my 2017 column that mental-health issues, inadequate staffing, and a lack of adequate responses to kites, grievances, and appeals might be contributing factors to the increases.

Another contributing factor may be an increase in the jail population. A more recent report by the American Civil Liberties Union noted an upward trend in incarcerations in Iowa due in part to overly punitive sentencing practices and parole violations.



In any event, the rise in inmate admissions will likely mean that jail administrators should expect to receive even more inquiries from my staff.

6. I wish that the privatization of government services would not make our job more difficult and limit our ability to resolve complaints.

Contracting with a private company to perform a government function creates an extra layer of bureaucracy that can make decision-makers less accountable and problems more difficult to resolve.

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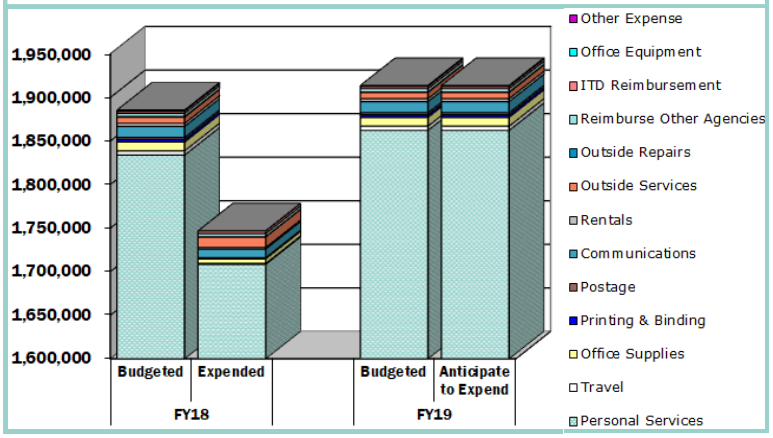
For instance, last winter, we were contacted by a man who was receiving unemployment benefits. He reported that someone had used his state-issued debit card to make fraudulent purchases. The problem was undeniable—two significant charges were made on his card within minutes of one another at two separate stores on opposite sides of Des Moines. The fact that he had the card in his possession made it physically impossible for him to have made both purchases. The state agency that issued the card told the man and our office that since privatization of unemployment benefits, they now only determine eligibility. After weeks of effort on the part of the complainant, the bank holding the funds finally agreed to fix the problem. If the state had been in control of the money, we would have had a direct line to officials who could have addressed the issue more quickly.

In another case, we raised concerns with the reasonableness of a decision made by a managed care organization (MCO). The Iowa Department of Human Services (DHS) agreed with our findings and wrote two letters to the MCO to forward our arguments. The MCO responded that it is acting legally—which is not in dispute—and has refused to accept our joint recommendation that they reverse themselves. We are currently in discussions with DHS on how to proceed. We have suggested to DHS that it consider withholding retained funds from the MCO until the problem is resolved.

I am not necessarily against privatization. There can be benefits such as cost savings that must be considered by government agencies and policymakers. It is important, though, for those officials to recognize that privatization has its downside when it comes to reviewing and correcting missteps in the interest of stakeholders. It is vital that government agencies place sufficient safeguards into their contracts with private providers to ensure the government has the ability to intervene in cases where merited.

FY18 & FY19 Financial Information

Presented to meet the requirement that state government annual reports to the Legislature include certain financial information.



IN CLOSING…

I'd like to thank my staff for their continued work to make good government better. Their dedication and enthusiasm inspire me every day.

Thank you, also, for taking the time to read my column and this annual report. If you have any questions, please don't hesitate to contact me directly at 515-281-3592 or kristie.hirschman@legis.iowa.gov.

The Office of Ombudsman is open 8 a.m. to 4:30 p.m. Monday through Friday, except on designated state holidays. In 2018, our office received 5,178 cases.

Means of Contact

☎	**3840**
✉	**901**
@	**391**
Other	**46**

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Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, IA 50319-0231
1-888-426-6283 (515)281-3592
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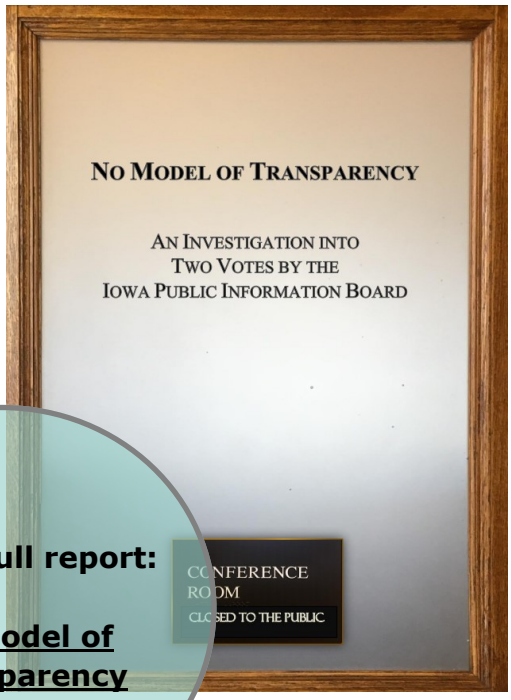
www.legis.iowa.gov/ombudsman

CRITICAL REPORT

Report Concludes State Board is "No Model of Transparency"

In a 25-page critical report, we concluded that the Iowa Public Information Board (IPIB) twice violated the state's Open Meetings Law when it voted on matters without adequately explaining what it was voting on.



Read the full report:

No Model of Transparency

IPIB emerged from private, closed-session meetings on two occasions in the summer of 2017 and publicly voted to take unspecified or vague actions. In its votes, board members referenced discussions known only to them. Although the votes created obvious confusion for those in attendance, IPIB refused requests to elaborate on its actions.

One IPIB board member, Keith Luchtel, later told us IPIB is not responsible for ensuring the public can understand its proceedings. "If they want to get involved in something and they don't understand it, why, that's not our problem," he said.

Iowa law requires that "the basis and rationale of government decisions, *as well as those decisions themselves*" should be "easily accessible to the people." The law further says that any ambiguity in the law's requirements "should be resolved in favor of openness."

We determined that IPIB's two official decisions were not easily accessible to the people and recommended that the agency admit fault for the missteps. With the exception of one of its board members, Rick Morain, IPIB rejected the recommendation. The board majority also rejected three other recommendations.

During our investigation, IPIB also refused to comply with our subpoena for recordings of its two closed-session meetings. We sought to determine whether the meetings were legally closed after an open-government advocate alleged they were not. We assured IPIB that we would keep the recordings confidential, but to no avail.

IPIB's primary mission is to police governments' compliance with the Open Meetings and Open Records laws. IPIB has stated several times in its annual reports that its goal is to be "the state's most transparent state agency." But our experience suggested otherwise.

"IPIB's handling of this matter has been anything but a model of transparency," said Ombudsman Kristie Hirschman. "When IPIB resists others' efforts to fully evaluate its actions, even despite assurances of confidentiality, it sends the signal to other government agencies that they may do the same."

MANAGED MEDICAID

Iowa's Home and Community Based Services Waiver Program (At a Glance)

The Iowa Home and Community Based Services (HCBS) waivers are Medicaid programs from the federal government in which regular Medicaid rules are set aside or "waived." The main purpose of waivers is to allow Medicaid recipients to receive services in the community rather than in institutions.

The Consumer Choices Option (CCO) is an option under the HCBS waivers. The CCO program is designed to offer more choice, control, and flexibility over a member's services, as well as more responsibility. This option gives members control over a specified amount of Medicaid dollars, which is called their budget. Members use these dollars to develop an individual monthly plan to meet their needs. Members directly hire employees, decide how much to pay them, and can purchase other goods and services.

One of the services allowed by some of the HCBS Waivers is Supported Community Living (SCL). This service is designed to assist the member with daily living needs. Assistance may include, but is not limited to:

*Personal and home skills
*Community skills
*Personal needs
*Transportation
*Treatment services

MCO Refused to Allow Members to Pay Staff Lower Wages to Increase Hours of Service

A service provider contacted our office on behalf of a member whose Managed Care Organization (MCO) would not allow the member, who was using The Consumer Choice Option (CCO), to set a lower wage for their Supported Living (SCL) employees in an effort to obtain more hours of service.

Prior to the MCOs administering Medicaid, members using CCO were routinely able to pay employees lower wages to obtain more hours of service. We contacted the MCO and they confirmed they would not allow waiver members in the CCO program to pay SCL providers a lower wage. The MCO said the additional hours of service were not medically necessary.

When we shared our concerns with the agency that oversees Medicaid and contracts with the MCOs, they agreed that this practice should be allowed under CCO. The agency sent the MCO a policy clarification and after many months, the MCO finally agreed to allow the practice.

CDAC Providers Are Allowed to Grocery Shop and Do Other Errands Without the Presence of the Medicaid Recipient

HCBS waiver members can receive Consumer Directed Attendant Care (CDAC) services to help recipients with self-care tasks they would typically do independently if they were able.

A Medicaid member's CDAC provider complained to our office that the Managed Care Organization (MCO) would not pay her to grocery shop without the member present. The provider said the member was too ill to accompany her. Before private companies took over Medicaid management, members were not required to be present while CDAC providers did grocery shopping or other errands.

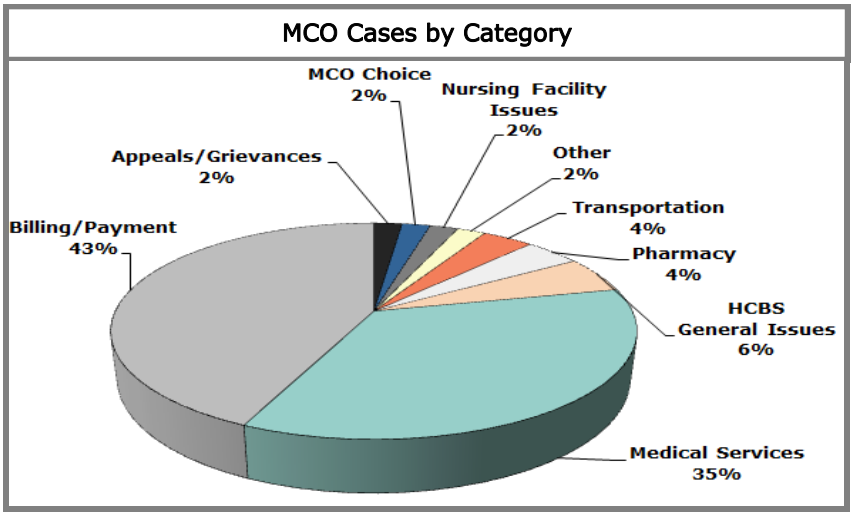
The MCO representative insisted that the member needed to accompany the provider in order for the provider to be paid. We discussed the situation with an agency official who concurred with our interpretation of the rules, and they sent the MCO a policy clarification. The MCO ultimately agreed that CDAC providers could be paid to do errands, including grocery shopping, without the member present.

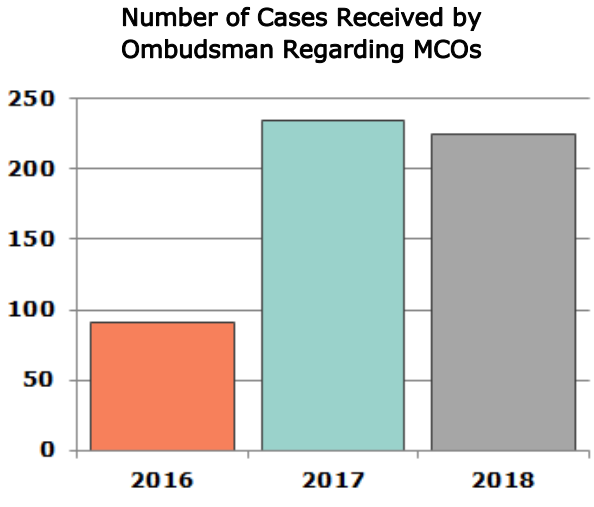
"System Error" Delays Payment for Six Months

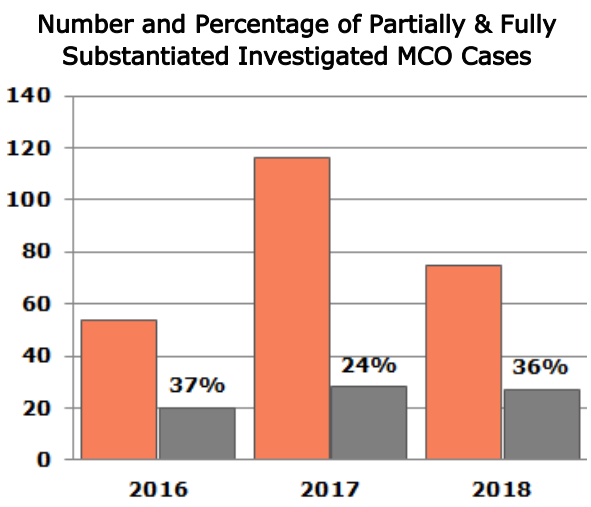
A Medicaid service provider contacted our office to report that she was not paid the correct amount after providing services to a Medicaid member. While the Managed Care Organization (MCO) initially paid the providers for services, it did not pay what should have been a one-percent increase. The provider said when they requested the increase, the MCO instead took back all of the money it previously paid the provider. The MCO told the provider that the member was covered under Medicaid Fee for Service, but not the HCBS Waiver for that month. The MCO sent the provider a letter to recoup payments for a prior month-and-a-half as well.

We contacted the MCO and the agency that oversees the MCO. An MCO representative said its data showed the member was not eligible for waiver services, hence its recoupment efforts. We then asked the agency to review the member's waiver eligibility and whether the MCO should pay the provider. In the meantime, the provider appealed the MCO's efforts to recover payments and was denied multiple times.

The agency responded that a system error showed a gap in coverage for waiver services. As a result of our inquiry, the agency added a form to update the member's eligibility. The provider resubmitted the claims, but the MCO continued to tell the provider the member was not eligible. The agency again sent information to the MCO regarding the member's eligibility. The provider, who initially contacted us in December of 2017, was finally paid correctly by the MCO six months later.







Managed Medicaid Members: Exhaust Your Appeal Rights

Medicaid recipients have the right to appeal managed Medicaid decisions. The first level of appeal is with the Managed Care Organization (MCO). An appeal is a request for the MCO to reconsider decisions made about a member's care or the services a member receives.

Even though we investigate Medicaid member complaints and make inquiries with the Department of Human Services (DHS) and/or with the MCO, we still encourage members to exhaust their appeal rights.

The main reason is that the appeal process usually has short deadlines. We do not want members to lose their appeal rights while we are reviewing the matter. Missed appeal deadlines can result in the member losing the right to challenge the agency's decision later in court. It is also important to point out that a member's benefits or services can continue if a person appeals quickly enough, usually within 10 days of the date of the adverse decision.

Another reason we suggest that members appeal is because this brings the issue to the MCO's and DHS' attention and there is potential for resolution even before a hearing is held. Officials cannot fix a problem they do not know about.

Members can find information about how to appeal in their MCO member handbook or by calling their MCO member services phone number. Members may also want to review a publication produced in partnership by the Managed Care Ombudsman Program, Disability Rights IOWA, and Iowans with Disabilities in Action. Chapter 4 discusses grievances, appeals, and state fair hearings.
https://www.iowaaging.gov/sites/default/files/library-documents/Advocacy%20Guide%20-%20V.%206.pdf

If a member appeals to the MCO, and the care or services continue to be denied, the next step is called a state fair hearing. The member appeals the MCO decision to DHS, and if appropriate, a hearing is granted. At this hearing, an administrative law judge (ALJ) from the Iowa Department of Inspections and Appeals receives evidence, takes testimony, and makes a decision.

When deciding whether to appeal, members need to take into consideration that if benefits or services continue during the appeal, a member who loses an appeal is required to pay back benefits or services received during the appeal period. The chart compiled by DHS' appeals section (right), provides a breakdown of the types of decisions and the total number of state fair hearings regarding Managed Medicaid.

These appeal statistics for 2018 indicate that members who appealed were much more likely to be successful—either to have the appeal dismissed because the agency or MCO granted the relief they requested, or to have the agency or MCO decision reversed—than they were to lose the appeal.

State Fair Hearing Decisions	
Dismissals	184
Reversals	55
Affirmed	29
Modified	3
Defaults	16
Total	**287**

Dismissals: Appeals where the hearing did not occur because the MCO or agency granted the relief requested by the member in the appeal so a hearing was no longer necessary.

Reversals: Appeals where the agency or MCO action was determined to be in error and the member won.

Affirmed decisions: The agency or MCO actions were found to be correct.

Modified decisions: The administrative law judge changed the decision of the agency, or MCO, or reversed in part and affirmed in part.

Default decisions: Either the agency or the member did not call into or attend the hearing.

CORRECTIONS & JAILS

Thin Evidence Undercuts Case

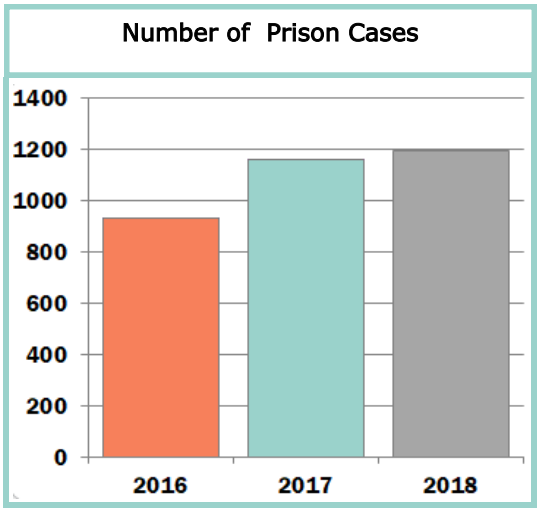
A prison inmate complained to our office that he was falsely accused of performing oral sex on his cellmate and found guilty of sexual misconduct. Upon review, we agreed there was no evidence that the incident took place. Unfortunately, there were a number of other problems with the reported incident.

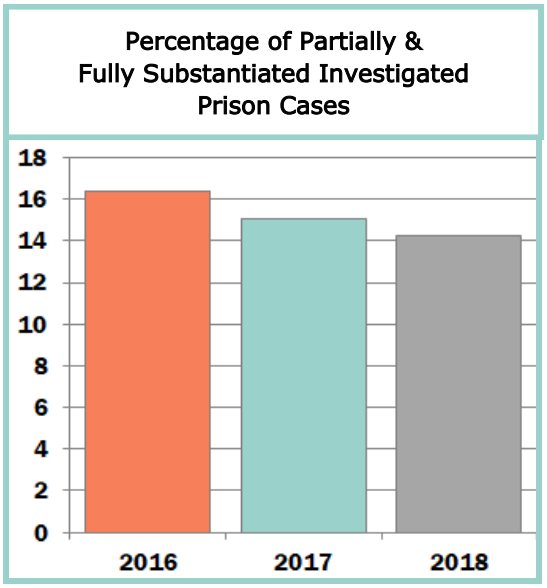
Our initial concern was that the writer of the disciplinary report was not a witness to the alleged violation. We were also concerned that the writer used different wording than what the staff witnesses reported. Further, the non-witness report writer appeared to choose certain words to make the situation look like more than it really was.

We also noted problems with the administrative law judge's (ALJ) hearing decision. The ALJ did not have both officers' versions of the incident. We felt this was important because the reports did not describe the inmates' involvement in the same manner. But what was more baffling to us was that staff never reported seeing a sex act, there was no evidence the incident took place, and neither inmate was reported to have been exposed. Despite the lack of evidence, the ALJ wrote in his decision that one inmate was "performing oral sex" on the other inmate.

The prison warden said there was "plenty of evidence" to support the sexual misconduct. We countered there were only conclusions based on assumptions.

After several back-and-forth exchanges with prison officials, it was clear we were at an impasse, so we contacted agency administrators for a review. Shortly thereafter, we were told that the reports for both inmates involved were dismissed. We were also advised that along with the dismissals, the staff involved received additional training to ensure policy and good practice is adhered to in the future.





Money Wrongly Withheld from County Inmates

Section 904.508(2) of the Iowa Code requires that up to $100 of allowances and incoming funds sent to state prison inmates be deposited in a savings account. This money is often referred to as "gate money" because it is given to the inmate the day he or she is released from prison.

We learned that county inmates being held in state prisons were also being required to put money in a savings account. Though it is typical for individuals who are awaiting a parole revocation hearing to be housed in a state prison, they are still considered "county inmates" until the matter is adjudicated. We did not believe the savings requirement actually applied to the county inmates. When we presented our arguments to department attorneys, they agreed. We were told that inmates who already put money in a savings account would get that money upon their release, and any future county inmates housed in prison would be exempt from being required to put money in a savings account.

Punishment by Nursery Rhyme

State law and national jail standards prohibit correctional officers from taunting or punishing inmates. These standards are especially important in county jails, where many inmates have not been convicted of any crimes and many suffer from untreated mental illnesses.

With that in mind, we received a disturbing report from a recently released inmate who said he heard jailers blast nursery rhymes at an intoxicated inmate for banging on her cell door. The inmate who contacted us said the experience was "completely degrading" and was like nothing he had ever heard before. The inmate had reported his observations to the sheriff, but we followed up to ensure the complaint was properly investigated and handled.

As a result of our inquiry, jail supervisors reviewed surveillance video and confirmed that music was played at a high volume on the night in question. A jail administrator said music is sometimes played in the jail to soothe the anxieties of mentally disturbed inmates, but he acknowledged that was not the intent in this case. He said the responsible officer was "totally out of line" and was confronted about her behavior. After several discussions, we were satisfied that jail supervisors understood the seriousness of the infractions and took appropriate action with the officer.

Practical Utensil, Impractical Cost

A jail inmate contacted us after he claimed his jail-issued plastic spork was thrown away or taken by jail staff during a search of his cell. Subsequently he was charged a $5 replacement fee. We learned that this jail requires inmates to sign a document affirmatively acknowledging that a $5 fee will be charged if an inmate loses a spork. However, some inmates (including the complainant) refused to sign the document.

The inmate filed a grievance on the matter. Jail administration determined that staff did not remove the spork from his cell and the $5 would not be reimbursed to the inmate.

Although our office took no position as to what happened to the inmate's spork, we questioned why the charge to replace the utensil was so high. We contacted the jail and asked for proof of the cost to replace the spork. We learned that the actual cost of a single spork issued to inmates at the jail is a mere $0.12, or $4.88 less than the fee charged.

So why charge $5? The jail explained that the fee is for "hassle and staff time" as well as an incentive for inmates to not lose their spork. The county sheriff, who provided a response to the inmate in his grievance appeal, reported that the process of documenting and replacing a spork could take a jail staff member up to 15 minutes. Additionally, according to the jail, the replacement fee policy was put into effect after the local waste water treatment plant reported an issue with sporks found in the sewer lines.

We considered the jail's explanation and did our own research. We contacted three random jails to determine how they handle lost jail-issued utensils. Two of the jails did charge a fee—though none charged as high as $5—and the other did not charge inmates for replacement sporks.

We also spoke to employees of the city's waste management treatment plant and the public works department. All denied any knowledge of the spork-related problems identified by the jail.

We determined the jail did not provide sufficient information to justify the $5 fee, and that the fee was excessive and unreasonable. Unfortunately, neither the jail administration nor the sheriff agreed with our position and refused to change the practice. Because we are limited to the power of persuasion, we opted to close the case as substantiated even though it was not resolved.

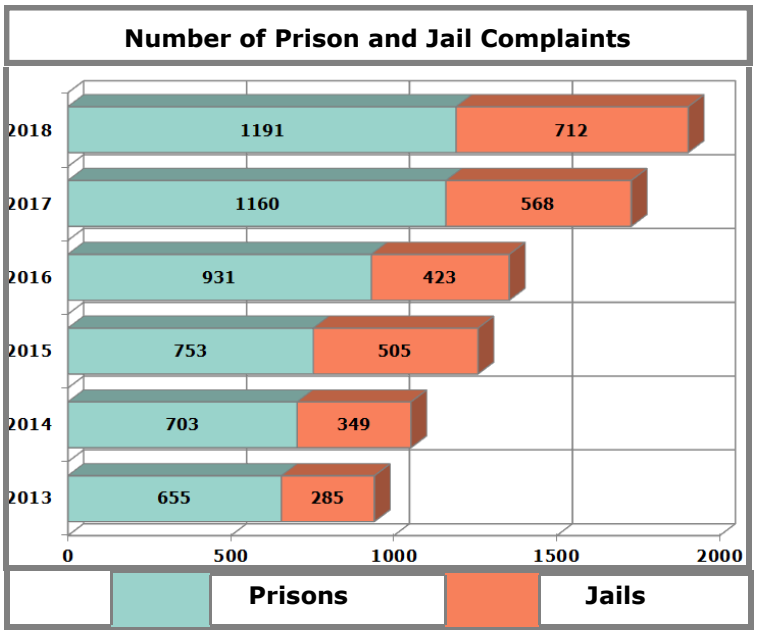
Jail Inmate had to Defecate on the Floor

A former county jail inmate filed a complaint after he had to defecate on the floor in the corner of his cell because there was not enough staff on duty to escort him to a bathroom. The inmate claimed that a medical condition sometimes required him to need immediate bathroom access. He said he should have been placed in a cell with a toilet for this reason.

On the date in question, the jail was staffed with a single dispatcher who was cross-trained as a jailer. Jail policy requires dispatcher-jailers to call patrol deputies when an inmate needs to be let out of the holding cell.

Despite the policy, the dispatcher took the inmate to the restroom twice without a deputy's help. The dispatcher told the inmate during the second restroom trip that going forward he would have to wait for a deputy because the dispatcher was the only one in the building. When the inmate had to use the restroom again, a deputy was not available, and he was forced to defecate on the floor in the corner of his cell.

We were reluctant to criticize the jailer for initially trying to be helpful to the inmate. Nonetheless, taking the inmate to the restroom without another staff in the jail violated the jail's policy and potentially compromised staff safety and security. We also found that the jail was not adequately staffed to respond to an emergency, as required under the Iowa Administrative Code. When we reviewed this complaint, the sheriff was already making an effort to increase staffing. We encouraged him to keep up those efforts.



Between 2013 and 2018:

- Prison complaints rose 82%
- Jail complaints rose 150%

LOCAL GOVERNMENT

Missing Cremains Stir Emotions

Two different families turned to our office for help dealing with concerns about a city cemetery. One family did not know for sure where a loved one's cremains were buried. The other family was worried the missing cremains were mistakenly buried in their plot.

The problems started when one family member visited her family's plot and saw orange flags near a headstone. It was discovered that the other family's headstone was partially on another family's plot. That raised questions about whether or not the headstone was the only thing in the wrong place. The cremains needed to be located, and if necessary, excavated and reburied.

Unfortunately, neither family was entirely reassured by the city's explanations. Even before the cremains were definitively located, a city official was adamant that the cremains were not buried in the wrong plot. Our office asked how that could be known for sure until the location of the cremains was pinpointed.

Excavation became necessary to find the cremains. And the more excavation that occurred, the more it appeared the cremains might be in the wrong plot after all. Understandably, that raised concerns for each family.

Given the sensitivity of the situation, we urged the city to communicate directly with each family. The family whose plot might have a non-family member's cremains buried in it asked for 48-hours' notice before it might be necessary to excavate in their plot. They also wanted to have a family representative on-site for any excavation within their plot. The city agreed to the requests, or so everyone thought.

Unfortunately, the city only contacted one of the two involved families ahead of excavation. The family who was worried that an unauthorized burial occurred in their plot was left in the dark despite the city's assurances to the contrary.

And whether or not the cremains were actually mistakenly buried in the wrong family's plot depends on who you ask. The city claims the cremains were in an "alley" or common space between cemetery plots. Representatives from each family seemed to think the cremains were actually in the wrong family plot. Our office was unable to make a firm conclusion on that aspect of the case.

What was undeniably clear to our office was that the city did not keep its promise to communicate with each family about the excavation schedule. It seemed like the least the city could do given the sensitivity of the situation.

The cremains were ultimately located and each family eventually found a measure of peace. We substantiated the complaint because the city's communication was lacking and they did not keep their word to communicate with each family equally.

An Untimely Notice is Rectified

A complainant contacted our office after he received a notice from a township board of trustees acting as "fence viewers" under Iowa law. The notice stated he had 30 days to remove trees along his property line. The law authorizes the trustees to remove the trees and bill the complainant for the cost if he fails to remove the trees.

Also according to the law, any person affected by an order or decision by fence viewers may appeal within 20 days of the decision.

We confirmed that the trustees' letter offered the complainant 20 days to appeal from the date of decision. However, the postmark on the envelope sent to the complainant by certified mail was dated 25 days after the date of decision.

We contacted the trustees about their late notice. A trustee agreed that the letter was not mailed soon enough for the complainant to appeal. As an excuse for their tardiness, he said that being a trustee is an unpaid position. The trustee accepted our suggestion that they delay the tree removal and contact the complainant to arrange for a reasonable appeal extension.

A Bridge Project That Went Nowhere

Several upset citizens contacted our office after county leaders scrapped plans to replace a historic, flood-damaged bridge. Instead they planned to replace the bridge with a low-water crossing when they ran out of time to spend federal money on the project. The new low-water crossing meant that the road would be impassable when the river was too high.

Upon review, we noticed the county's project timeline appeared to show no activity for over two years. When asked about the apparent lag, county officials responded that they spent the time restoring dozens of other flood-damaged sites. However, county records showed that the other projects were completed approximately 14 months before planning resumed on the disputed bridge project. County officials offered no rational explanation for the delay.

We also discovered that state and county officials took two-and-a-half months to realize a project deadline was missed, but they could not offer a convincing explanation for the missed deadline.

The federal government eventually told state and county officials they could lose the federal money altogether. Federal officials allowed the money to be spent on alternative projects, which meant the plans to replace the bridge were officially dead.

We concluded that more than two years of inactivity and blown deadlines likely doomed the bridge project, or contributed significantly to its demise. As a result, county residents went nearly a decade without a river crossing at that location. They now have a lesser river crossing and less faith in their government. We urged state and local officials to ensure similar breakdowns do not occur in the future. That boils down to better communications and attention to detail.

School Board Sells Old Computers for a Song

An attentive citizen grew concerned when he saw that his local school district had offered students' used computers for sale at a low price. The citizen argued that the district was shorting itself on a potential return for the four-year old laptops, which could be bought by students and staff for $150 apiece. Property tax rates in the area were already high enough, the citizen said, and the district had a fiscal responsibility to taxpayers to get maximum value on the computers.

We reviewed meeting minutes, emails, notes, and other records pertaining to the sale. We also interviewed the superintendent to better understand how and why the sale was designed as it was. The superintendent told us that he came to a ballpark figure on the laptops' value through a website that appraises computers. However, when we used the same website to check his work, we found the laptops might be worth almost four times more, depending on their condition. Similar computers on other websites sold for between $400 and $640. It appeared to us that the technical specifications of the laptops may not have been taken into account.

While state law allows school districts to dispose of obsolete equipment, best practice calls upon all governmental entities to get fair-market value on their used property. A district policy in force at the time of the sale stated that the district's objective in the disposal of equipment is "to achieve the best available price or most economical disposal."

Meeting minutes gave no indication that the school board had questioned the superintendent's methodology or carefully considered its own policy. We suggested that an expert should have been consulted in the sale, or that an auction be used in future such sales.

The concern was also raised that the board had violated conflict-of-interest laws by allowing one of its members to purchase one of the used computers. We did not agree The district took adequate steps to advertise the sale to potential buyers, and students were given precedence over staff and board members.

The board replied that our findings were "very informative" and it pledged to use an auction or sealed-bid procedures in future sales of used equipment.

City Administrator Overlooks City's Own Zoning Regulations

Workers for a car dealership in northwest Iowa were surprised to see a string of 15 metal storage containers placed on a vacant lot next door to their business. The aesthetics were not the only concern; the containers also blocked the view of one of the lots where cars were on display.

Representatives of the business protested to the mayor and city council, but the council said its city administrator had determined there was no city prohibition on storage containers. The council decided to pass an ordinance to ban such containers in the central business district, but the containers that were already placed were "grandfathered" in, meaning they were allowed to remain in place under the previous version of the law.

We reviewed the situation and found that while city ordinances did not expressly prohibit storage containers, they also did not allow them. A provision of the city's zoning ordinances stated that any proposed land uses not specified in the ordinance must be reviewed by the city's planning and zoning commission before they would be allowed. Records showed that the commission was never consulted on the plans. Instead, the city administrator considered the proposal on his own and gave his permission.

The administrator admitted to us that he had overlooked the requirement that the planning and zoning commission be consulted. We asked him and the city attorney to consider rectifying the situation. After considerable delay, we involved the council in the discussion and shared our concern that the dispute remained unaddressed. Council members discussed the matter further and offered the owner of the containers free land, as well as infrastructure and relocation expenses to move his business to an industrial park. Unfortunately for the dealership, the business owner declined the city's offer.

Although we had no ability to force the issue further, we impressed upon city officials that the situation had been mishandled. A council member acknowledged the error. We also credited the council with making a good-faith offer to reverse the mistake that had been made.

Is it a Sidewalk, Recreational Trail, or Both?

A homeowner was shocked when he was cited and fined by the city for not shoveling his "sidewalk." The befuddled resident countered that he had no sidewalk. What ran along one side of his property was a 10-foot wide recreational trail the city had installed several years prior.

The complainant, some neighbors, and at least one city councilmember recalled that city officials said the city would handle snow removal.

The city persisted with the citation, so the complainant contacted us.

The city initially claimed it had told trail-side residents before construction that they needed to clear a four-foot wide path when it snowed, but the city could provide no documentation supporting this assertion. Confusingly, city officials referred to the facility as a sidewalk *and* a trail.

We researched the matter and concluded that sidewalks and trails are similar in some respects, but fundamentally different. Sidewalks generally accommodate walkers, runners, and children on bikes. Multi-use trails allow each of those activities and more, including motorized vehicles in some jurisdictions.

We told the city that their argument that the facility was a sidewalk and a trail did not make sense. We also concluded that city officials could not prove that nearby residents were told they would be responsible for snow removal.

We asked the city to reconsider the fines that our complainant and other homeowners received, in the interest of fairness. To our disappointment, they did not accept our suggestions, but committed to handling snow removal on the trail in the future.

Compounding Interest Rates Compounds Payment Problems

In 2015, our office found that a city utility was compounding the penalty on sewer bills, resulting in extraordinarily high and improper utility billing. Four years later, we are still finding similar practices. While not outlined in Iowa Code, we generally believe that most city utilities have a reasonable, one-time, flat amount as a penalty for late payment. However, when municipal utilities compound the penalty by adding a high percentage (sometimes as high as 10 to 15 percent) of the total amount due, rather than just the bill itself, the amount due becomes unmanageable and can have severe consequences.

We found two city utilities in 2018 that were compounding the penalty when customers fell delinquent and their water was shut off.

In one small town, the practice was to add 15 percent of the total amount due. In this situation, the city utility allowed the customer's bill to fester. The original bill itself was only $41, but by the time the customer contacted our office, his last month's penalty was $173 and his total bill was $1,117. The city had also filed a lien against his property with the county recorder.

We reviewed the complaint and advised the city utility that we believed the practice was unreasonable and possibly contrary to law. We asked the utility to recalculate the bill using simple interest, which applies a penalty to the bill itself, rather than the total amount due. The city agreed and the bill was reduced to $302, and the lien against the home was dropped.

When a citizen from another community contacted us, her bill was $4,935, and only $1,776 was the result of actual usage. When the bill went unpaid each month, the city utility added another 10 percent of the amount due, which compounded the penalty. At one point, the monthly penalty reached $270 for non-payment—an amount that is hard for almost anyone to pay.

We called the city utility and explained simple interest and contrasted that with their practice of compounding the interest. After the utility consulted legal advisors, they agreed to recalculate the amount due.

In addition to making sure city ordinances are fair, city utilities are required by law to charge customers enough to pay for the cost of the service. When customers fall behind, others have to pick up the difference. This potentially raises everyone's rates. In the examples above, there is another recurring theme: City utilities need to issue notices and disconnect service in a timely fashion. If outstanding debt is allowed to go unpaid for months, that is not fair to the city, the resident, or other citizens.

City Offered Property for Sale That it Did Not Own

A southwest Iowa resident learned his deed did not have the right legal description for property he had purchased from the city two decades earlier. Somehow, nearly 50 feet of his lot was excluded from the deed, which the complainant said he did not know about or consent to.

It turned out the city did not own all of the property it had advertised when it sold the property. Between the sale of the property and the transfer of the deed, someone had realized the mistake and removed the 50 feet from the deed's legal description. City officials could not provide records or explain what took place.

The situation was complicated by the city attorney's involvement, as he was an adjoining property owner with an interest in seeing the disputed property resolved in his favor.

The complainant was adamant that the city should give him what was originally advertised for sale, despite the deed's description.

The Ombudsman issued several formal recommendations, including having the city attorney recuse himself from further involvement. The Ombudsman also recommended that city council members acknowledge the city's past errors and work with new legal counsel to ensure the city followed Iowa law when disposing of the remainder of the disputed lot.

City officials accepted all of the Ombudsman's recommendations, acknowledged their errors, and made what we felt was a fair and reasonable offer to the complainant.

Despite our best efforts, the complainant was dissatisfied with the city's offer and opted to confer with an attorney and weigh his legal options.

Cases Opened in 2018 by Agency

Name	Jurisdictional Complaints	Jurisdictional Information Requests	Non-jurisdictional Cases	Total	Percentage of Total
Administrative Services	8	0	0	8	0.15%
Aging	3	27	0	30	0.58%
Agriculture & Land Stewardship	7	1	0	8	0.15%
Attorney General/Department of Justice	13	6	0	19	0.37%
Auditor	1	1	0	2	0.04%
Blind	1	0	0	1	0.02%
Civil Rights Commission	7	1	0	8	0.15%
College Aid Commission	0	0	0	0	0.00%
Commerce	11	1	0	12	0.23%
Corrections	1191	40	0	1231	23.77%
County Soil & Water Conservation Districts	0	0	0	0	0.00%
Cultural Affairs	1	0	0	1	0.02%
Drug Control Policy	0	0	0	0	0.00%
Economic Development	1	0	0	1	0.02%
Education	3	0	0	3	0.06%
Educational Examiners Board	0	0	0	0	0.00%
Ethics and Campaign Disclosure Board	1	0	0	1	0.02%
Executive Council	0	0	0	0	0.00%
Human Rights	0	2	0	2	0.04%
Human Services	623	26	0	649	12.53%
Independent Professional Licensure	5	3	0	8	0.15%
Inspections & Appeals	25	3	0	28	0.54%
Institute for Tomorrow's Workforce	0	0	0	0	0.00%
Iowa Communication Network	0	0	0	0	0.00%
Iowa Finance Authority	2	0	0	2	0.04%
Iowa Lottery	1	0	0	1	0.02%
Iowa Public Employees Retirement System	0	0	0	0	0.00%
Iowa Public Information Board	1	0	0	1	0.02%
Iowa Public Television	0	0	0	0	0.00%
Law Enforcement Academy	0	0	0	0	0.00%
Management	2	0	0	2	0.04%
Municipal Fire & Police Retirement System	0	0	0	0	0.00%
Natural Resources	4	2	0	6	0.12%
Office of Ombudsman	0	45	0	45	0.87%
Parole Board	33	8	0	41	0.79%
Professional Teachers Practice Commission	0	0	0	0	0.00%
Public Defense	0	1	0	1	0.02%
Public Employees Relations Board	1	0	0	1	0.02%
Public Health	11	0	0	11	0.21%
Public Safety	23	0	0	23	0.44%
Regents	15	0	0	15	0.29%
Revenue & Finance	33	6	0	39	0.75%
Secretary of State	3	1	0	4	0.08%
State Fair Authority	0	0	0	0	0.00%
State Government (General)	138	35	0	173	3.34%
Transportation	36	0	0	36	0.70%
Treasurer	2	2	0	4	0.08%
Veterans Affairs Commission	3	0	0	3	0.06%
Workforce Development	28	0	0	28	0.54%
State Government - non-jurisdictional					
Governor	0	0	8	8	0.15%
Judiciary	0	0	160	160	3.09%
Legislature and Legislative Agencies	0	0	10	10	0.19%
Governmental Employee-Employer	0	0	6	6	0.12%
Local Government					
City Government	549	20	0	569	10.99%
County Government	993	28	0	1021	19.72%
Metropolitan/Regional Government	27	1	0	28	0.54%
Community Based Correctional Facilities/Programs	289	6	0	295	5.70%
Schools & School Districts	26	2	0	28	0.54%
Special Projects				50	0.97%
Non-Jurisdictional					
Non-Iowa Government	0	0	86	86	1.66%
Private	0	0	469	469	9.06%
Totals	**4121**	**268**	**739**	**5178**	**100.00%**

Positive Feedback From the Public and Officials

- I just wanted to let you know that I was able to get my prescription today. Thank you for helping me get past the incorrect information and to what was actually needed, I appreciate it so much!

- Des Moines woman

- Honestly this is the most anyone has done for me in the past 2 1/2 years! The only acknowledgement I've received! God bless you, you are a great person even to a complete stranger! Thank you for being you and in your field, I hope to become someone like you one day! Helping people who have been done wrong by the ones were supposed to trust. I appreciate you very much. Thank you again.

- Fort Dodge resident

- You are the only people that in any way, shape or form were even close to being open or responsive.

- Johnson County man

- I would like to thank you for your thorough and thoughtful feedback. You did not have to do that and you were very kind and generous to take the time out of your busy schedule to do so. You are amazingly perceptive, detail-oriented and thoughtful.

- Iowa City woman

- Thank you for your prompt response. I had heard of the Office of Ombudsman (and heard very positive things about it) but never thought I would call it. I greatly appreciate your listening to me today. I felt so powerless in the moment and just appreciate being able to communicate the news that my referral was rejected within an hour of calling in.

- Bettendorf resident

- Thanks for hanging in there with me. I appreciate the advice and support from 1,000 feet more than you could know. I know that you are also a neutral voice, facilitating conversation, discussion and resolutions. Thanks for that.

- Cedar Falls woman

- If it wasn't for you and your office, none of this would have ever gotten done.

- Madison County resident

- Your information is a godsend and I can't thank you enough. I have already taken several measures you advised, but your information suggested more possibilities…I'll keep you posted and am very grateful for your kind and expert assistance.

- Des Moines woman

- I own a medical billing service and we bill for a number of Iowa providers. When we have worked and worked with the insurance companies [MCO] and cannot get any further we reached out to your area. I want to compliment one of your employees. She responds to emails quickly, resolves problems with expertise and is great to work with. She knows her job and I can't say enough about the experience we have had dealing with her. It is so wonderful to work with a knowledgeable and responsive individual that helps you find your way when an insurance company [MCO] is not paying claims as they should. Thank you.

- Medicaid Provider

- As always thanks for the service that you are providing and the job that you are tasked with. I know it cannot be an easy one. We are always open to suggestions if you see that we may need to change the way that we are handling things. Thanks again.

- County Jail Administrator