IOWA OFFICE OF OMBUDSMAN

ANNUAL REPORT FY2022



www.legis.iowa.gov/ombudsman

This annual report about the exercise of the Office of Ombudsman functions during the 2022 fiscal year is submitted to the Iowa General Assembly and the Governor pursuant to Iowa Code section 2C.18.

Office of Ombudsman

Ola Babcock Miller Building

1112 East Grand Avenue

Des Moines, IA 50319-0231

(888) 426-6283 (515) 281-3592

Fax (515) 242-6007 TTY (515) 242-5065

E-Mail: ombudsman@legis.iowa.gov

www.legis.iowa.gov/ombudsman

Office hours are 8 a.m. to 4:30 p.m.
Monday through Friday, except on
designated state holidays.

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Message from the Ombudsman



It is my pleasure to write my first column as Iowa's newly appointed Ombudsman. I would like to take this opportunity to share my observations of the office so far, and to preview where I see it going in the years to come.

First, let me introduce myself. My name is Bernardo Granwehr. I was raised in West Des Moines and graduated from Valley High School in 1991. I attended the University of Iowa for my undergraduate studies in economics and received my law degree from Drake University in 2004.

My first stint in state government was with the Auditor's Office, where I served for 14 years as Chief of Staff and Legal Counsel. More recently, I worked for three years with the Iowa Utilities Board as its regulatory law manager.

My positions in state government, and as a citizen and taxpayer, have made me acutely aware of the role government has in being a good steward of your tax dollars. Government has an obligation to provide services as efficiently and effectively as possible, and the Ombudsman can have a role in that process.

Iowa is one of only two states with an ombudsman that has the broad authority to investigate both state and local governments (Hawaii is the other). Government oversight is not a role I take lightly. The Ombudsman's office provides a critical link between government agencies and the people they serve.

For agencies, we provide an important feedback loop by identifying issues or problems and proposing solutions to improve their level of service. For citizens, we can share ideas and connect them with resources and people to help them solve their problems.

In some cases, it is our job to simply explain the decisions their government has made and the rationale behind them. Opening those lines of communication and fostering understanding is critical to keeping citizens engaged in their government and ensures that democracy flourishes.

I look forward to sharing my office's experiences and observations with Iowa's legislators. Iowa law provides me with the opportunity to update the General Assembly on my office's activities over the past fiscal year. This report will cover stories about the people and agencies we have helped, as well as our continuing work on topics of great importance. I intend to increase the frequency of my office's communications with the General Assembly outside of the annual report process.

During fiscal year 2022, which is the period covered in this annual report, my office opened 6,484 cases -- a 5% increase from fiscal year 2021 and a 60% increase from fiscal year 2014. We are handling this higher caseload with 16 staff – the same number we had in fiscal year 2014. Of the total cases, 5,187 were complaints and 639 were requests for information about state or local government agencies within our jurisdiction.

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With such a big workload, we must be selective about the cases we choose to investigate. I am working with staff to improve our process of identifying the best cases to investigate that will have the biggest impact for the greatest number of Iowans.

We must also explore efficiencies that will allow us to serve more people with our finite resources. For example, I discovered shortly after my arrival that the vast majority of the office's cases come in by phone. Meanwhile, the Ombudsman's website is badly outdated – a love letter to the 1990s – and has not kept up with users' expectations. With needed updates, I believe an improved website could provide a streamlined option for making complaints and accessing useful information that would offer help more quickly and efficiently. A more robust website would also offer some self-service capabilities and avoid the need for some complainants to ever speak with my staff .

As with other state agencies, it is an ongoing challenge and opportunity to make the best use of our limited resources. But I am excited about this challenge and am honored to be your State Ombudsman.

What We Do:

We investigate complaints against agencies or officials of state and local governments in Iowa.

We work with agencies to attempt to rectify problems when our investigation finds that a mistake, arbitrary, or illegal action has taken place.

We have a unique statutory responsibility to investigate and determine if an action was fair or reasonable, even if in accordance with law.

We have access to state and local governments' facilities and confidential records to ensure complete review of facts regarding a complaint.

We make recommendations to the General Assembly for legislation, when appropriate.

Local Government

City and Rural Water District Disconnect — Who is Responsible for Water Shutoff?

A commercial property owner in a small town closed his business, but he could not get the rural water provider to call back or disconnect the water. The city informed the property owner that the rural water district controls the disconnection process and would probably decline to disconnect the water. The property owner wanted the water shut off in time to drain the building's water pipes before winter to prevent freezing of the pipes.

We contacted the rural water provider to inquire about the property owner's issue. According to the terms of a franchise agreement that the rural water district and the city had signed the year before, it was actually the city that needed to authorize the disconnection of the complainant's water service. The rural water provider apologized and agreed to contact the complainant to explain the process.

Ultimately, the property owner was able to get the rural water district and city to agree to a full disconnection, and the rural water district agreed to pull the water meter from the property owner's commercial building, thus resolving the issue.

City Employees' Use of Public Equipment on Private Property Sparks Complaint

A citizen in northeast Iowa complained to our office last winter because two city employees repeatedly used their work trucks to plow snow at their homes. The resident correctly suspected that was wrong, as state law generally prohibits the use of public resources and equipment for private purposes. The same employees were observed using city lawn tractors to mow their yards during warmer months.

The resident was proactive and took the concerns directly to the city's mayor, who pledged to talk to the employees. Despite multiple conversations with the mayor, the resident kept seeing the municipal workers plowing their own driveways with the city's trucks.

Before contacting us, the citizen recorded several videos of the city workers plowing snow at one of their homes. That gave our office solid evidence to take to the city in hopes of putting a quick stop to the misuse of city equipment.

We contacted the mayor to summarize the citizen's concerns and outlined what we saw on the videos. The mayor quickly confirmed that the vehicle we saw in the videos belonged to the city. We told the mayor that when public property is used for private purposes, it could be a crime, as outlined in a public report on a similar issue that our office issued in 2009.

The mayor agreed to talk to the employees to let them know they could no longer use city equipment at their homes. We spoke to the mayor again after he talked to the city employees and he assured us there would be no further problems.

We shared the outcome with the citizen and encouraged them to recontact us if the employees continued to misuse their work equipment. Over nine months later, we have fielded no further complaints from the citizen.

Traffic Camera Mix-Up

An elderly driver received a traffic-camera speeding ticket in the amount of $150 from an Iowa city he had never visited. As part of the traffic-camera enforcement process, a photo of the car in question and its license plate were provided to the driver along with the citation. However, neither the car nor the license plate pictured with the citation was his.

The driver's son contacted the local police department that issued the speed camera citation and was told the ticket would be dismissed. However, the driver was having difficulty getting this confirmed. Our office assisted by contacting the local police department to verify the speeding ticket would be dismissed and would not appear on the driver's record. The police department confirmed both.

Complainant Rights and Responsibilities

You are entitled to:

- make a complaint and to express your opinions in ways that are reasonable, lawful and appropriate;
- a reasonable explanation of the Ombudsman's complaint procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply;
- a fair and impartial assessment and, where appropriate, investigation of your complaint based on the merits of the case;
- a timely response;
- be informed in at least general terms about the actions taken and outcome of your complaint;
- be given reasons that explain decisions affecting you;
- one supervisory review of a decision you disagree with;
- be treated with courtesy and respect;
- communicate valid concerns and views without fear of reprisal or other unreasonable response.

You are responsible for:

- treating the Ombudsman's staff with courtesy and respect;
- clearly identifying to the best of your ability the issues of the complaint, or asking for help from the Ombudsman staff to assist you in doing so;
- providing to the Ombudsman to best of your ability all the relevant information available to you at the time of making the complaint;
- being honest in all communications with the Ombudsman;
- informing the Ombudsman of any other action you have taken in relation to your complaint;
- cooperating with the staff who are assigned to assess, investigate, determine, resolve or otherwise deal with your complaint

Local Government

Iowa Resident has Trouble Getting Cash Back from Traffic Stop

Sheriff's deputies who pulled over a vehicle to serve a warrant on the passenger discovered he was carrying approximately $1,600 in cash. The passenger told us that the deputies removed the cash from his wallet during his arrest on the side of the road. He was taken to the arresting county's jail for processing and then immediately transferred to the custody of the county that issued the warrant.

The passenger contacted our office six weeks after his arrest because he was having difficulty getting the arresting agency to release his money. He had contacted the sheriff's office multiple times, but was not able to get final resolution as to return of the cash.

Our office contacted the sheriff's office on behalf of the passenger. At the time of his arrest, the passenger was not under investigation by the arresting authority and no investigations were opened after the arrest. As such, it was unclear why the arresting authority had not released the cash, given there was no need for that county to hold the cash.

The sheriff's office immediately agreed to release the cash and stated that the resident simply needed to write a letter asking for its release and the name and contact information of the person designated to receive the money. The sheriff did not provide us with an explanation for why this process had not been shared with the passenger when he tried to have the cash released during the six-week period after arrest.

Nearly ten weeks after the arrest, the cash was at last released to a family member.

System Glitch Leads to Delayed Rental Assistance

An individual contacted our office after she was unable to finalize her application for the Iowa Rent and Utility Assistance Program. The individual stated that she had attempted to submit her application online, but there appeared to be a system glitch that would not allow her to accurately designate her household size. As a result, her application could not be submitted. The individual's attempts to resolve the concern with the agency were unsuccessful, and she was informed that many others were similarly impacted by the system error.

Our inquiries with the agency confirmed a vendor system glitch, and it would not be an easy fix. The agency spent nearly a month working with the technology vendor before the vendor implemented an update to the software program. With the system glitch corrected, the individual and all others impacted were able to submit the application online. Our review of individuals' inability to submit the rental assistance application was especially significant considering the federal funding for the program included a spending deadline that was fast approaching.

Local Government

Review of Roadside Investigation Pinpoints Flaws in OWI Case

A late-night, roadside investigation drew our scrutiny after news reports raised questions about a decision by a sheriff's office not to arrest the driver. The driver, a prosecutor in a neighboring county, was suspected of being intoxicated, but no sobriety test was performed and no charges were filed. Some in the community believed the prosecutor was let off because of her work and relationships in law enforcement.

We reviewed multiple video and audio recordings from the scene and interviewed a witness and deputies from two sheriff's departments who responded to the call. We also pulled police reports, emails and text messages from the agencies.

We found there was ample evidence at the scene that the prosecutor may have been driving while drunk. There were open and unopened beer cans in and outside the car. A responding sheriff's deputy said the inside of the car smelled strongly of alcohol. The driver, who was holding an open beer from the driver's seat when police arrived, was slurring her speech and admitted to drinking. However, the car was not running and the keys were not in the ignition. The driver told police she had consumed some of the beer after the car was shut off.

The deputy explained to us that, under the circumstances, it could not be proven that the prosecutor was actually driving the car while intoxicated. He believed the situation precluded him from doing any further investigation.

Our review of Iowa law and several past court decisions in OWI cases drew us to a different conclusion. We asked the county attorney where the incident occurred for his input on the matter, and he agreed that further investigation at the scene, including a field sobriety test and possibly a breath test, was warranted.

We found no evidence to suggest that the deputy was influenced in any way by the driver's position as a prosecutor. Rather, we concluded that the deputy's relative lack of experience and the inaccessibility of supervisors led to his decision.

Human Services

Good Safety Plans Serve Iowa's Child Welfare System

A safety plan is an important tool that Iowa's child welfare agency can use to mitigate potential threats to a child's safety and keep cases out of the courts.

They can be used as a means to keep children safely in their home with certain precautions in place. And when children cannot safely remain in the home, safety plans are often used as a voluntary agreement made with parents for a child to stay temporarily out of the home with either the child's other parent, a family member, or some other individual known to the child.

Used in this way, a safety plan can be thought of as an informal alternative to a court-ordered removal. When done properly, safety plans can be mutually beneficial, allowing families to avoid or delay juvenile court entry while simplifying the agency's efforts to keep children safe. But when safety plans are not executed properly, they have the potential to be just as onerous as a court-ordered removal — with none of the protections afforded by the judicial system.

Improving safety plans

In recent years, Iowa's child welfare agency has made important progress in this area. Legislation passed in 2022 at the agency's urging now ensures that safety plans will be regulated under Iowa Code and the agency's administrative rules. The agency has also updated its policies, introduced improved forms, and worked to develop new trainings on safety plans for its employees.



The agency has also backed efforts that utilize money from the federal government to offer parents greater access to legal representation. A pilot project in six Iowa counties now provides lawyers to parents *prior* to juvenile court involvement. Such pre-filing legal services can help protect the rights of families living under safety plans.

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Human Services

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Challenges Remain

Even when safety plans are well-executed, other challenges remain. For example, there is currently no agency-wide system for tracking safety plans that place a child out of the home, making it impossible to know how many of Iowa's children are living under such an arrangement. Families with safety plans still have fewer legal protections than those whose children have been formally removed. And there are fewer resources that can be accessed to help substitute caregivers care for a child. All of these issues are part of a larger, nationwide child welfare controversy known as "hidden foster care," and are not unique to Iowa.

We are pleased with the agency's work in its pursuit of a goal to ensure that safety plans are not coercive and provide parents with their legal protections.

Our Work Continues

There is still work to be done, and we hope to see even more progress in the new year.

In the meantime, the Ombudsman's office will continue to monitor these types of cases with the expectation that the rights of families are respected.

Iowa's Child Welfare System Bolstered by New Child Abuse Fatality Internal Review Team

From time to time, the Ombudsman's office publicly criticizes the administrative actions of government agencies. It is important for us to also highlight an agency's achievements. This is especially true when those achievements happen in response to our own recommendations.

In September 2020, our office issued a public critical report entitled *Misplaced Trust: An Investigation of the Death of Sabrina Ray* (https://www.legis.iowa.gov/docs/publications/CI/1150911.pdf). We had found that the Department of Human Services did not have a formal internal review process for child abuse fatalities of children who were known to the system. Our report recommended that the Department develop a written protocol for reviewing such cases for the purposes of identifying potential areas in need of improvement, which they committed to doing.

Just a few months after our report went public, we were pleased to learn that the agency was working to create a more systematic review practice. On February 9, 2021, our office met with Department Administrators Janee Harvey and Vern Armstrong, who informed us of the newly developed Critical Case Coordinated Review Team (CCCRT). Shortly thereafter, the Department updated the Legislature on its progress with our recommendations, emphasizing the new CCCRT.

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Human Services

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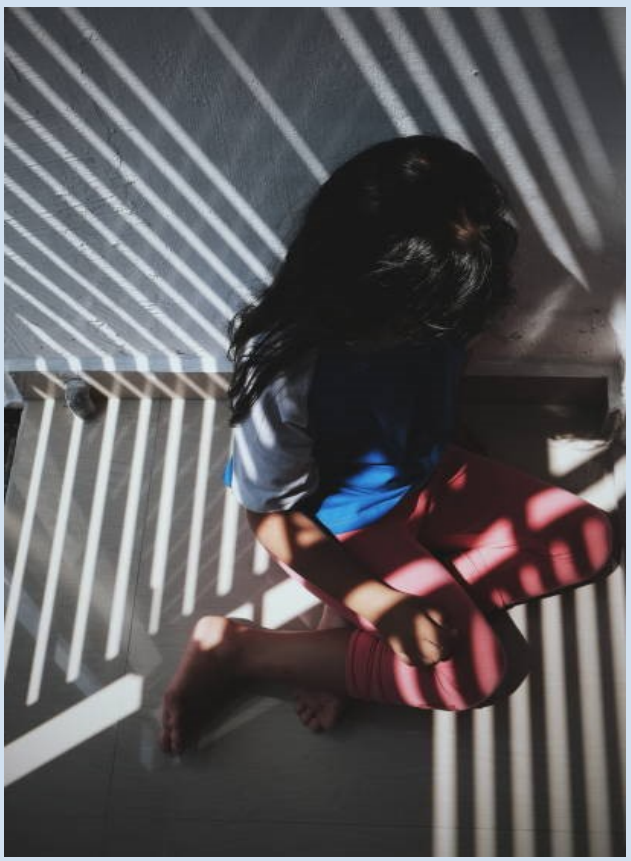
The CCCRT was designed to review child abuse fatalities with criteria that mirrored our recommendations, ensuring that any instance where a child whose death involved suspected abuse, and who was known to the Department in a child welfare capacity within the previous 12 months, would receive special attention. Each review includes a multi-dimensional analysis that covers policy and practice considerations; issues involving the Department's electronic record-keeping systems; the quality of contracted services; and staff training issues. The reviews include a written report with recommendations for any identified gaps or areas for improvement.

The most striking feature of the CCCRT might be its impressively quick turnaround time. All reviews are initiated within 10 business days of a qualifying case becoming known to the Department. Final reports are to be completed within 25 business days of initiating a review. A debriefing with the Department's Field Operations Administrator occurs within five business days of a completed review.

Over the summer of 2022, our office reviewed all CCCRT reports from calendar year 2021. We were impressed with how swiftly, but thoroughly, the review team carried out its duties and how laser-focused it was on identifying improvements at every level. We can attest that the CCCRT is already producing improvements that will impact how the Department carries out its child welfare responsibilities. This is particularly encouraging given that the review team is just getting started, having only been active for less than two years. We envision even greater results as the team continues to refine its own practices. And in our view, Iowa's child welfare system will reap the benefits of its work for years to come.

Additionally, the CCCRT will aid the Department in providing the most accurate information it can on child maltreatment deaths to the National Child Abuse and Neglect Data System (NCANDS). Likewise, it will help the Department fulfill its responsibility under the federal Family First Prevention Services Act to develop a comprehensive, statewide plan to prevent child maltreatment deaths.

But its most meaningful achievement is furtherance of the Department's commitment to protecting the state's most valuable and vulnerable resource, Iowa's roughly 700,000 children.



State Government

Sales Tax Payment Change Causes Confusion

A man who runs an auto repair shop had made his sales tax payments the same way for 20 years: By mailing a check to the agency. But that appeared to change abruptly one day when he discovered the agency's website had changed and he couldn't find the "mail-a-check" option. He was surprised because he said he had not received any kind of notice from the agency.

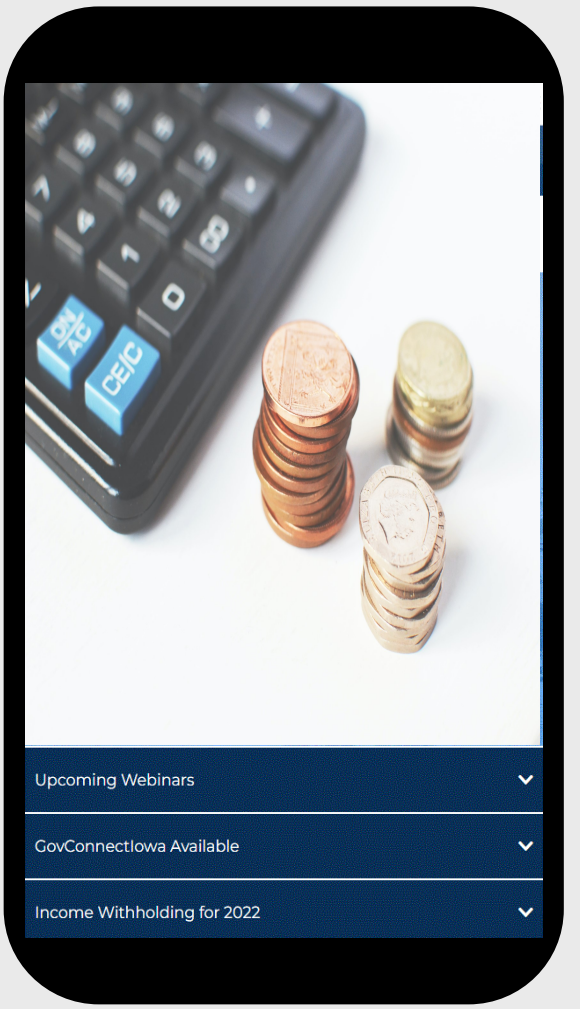
He was able to make two payments with paper vouchers, but he said it was unclear whether the agency would continue to accept vouchers going forward. So he contacted our office.

His complaint was very similar to two others we had received in the prior two months. We conveyed his complaint to a manager for the agency and she responded later that same day. She explained that they had introduced a new website called GovConnectIowa. She described it as "a secure online portal designed to be customer centric and provide self-service tools to enable taxpayers to perform more integrated transactions and activities specific to their needs." Taxpayers could still submit payments by mail, but they were encouraged to use the new website for more comprehensive access.

A few months before the change, she said, the agency began sending emails about the change to people who had subscribed to email updates (our complainant was not signed up for email updates). "These messages were also shared with various organizations and associations in Iowa, like the Small Business Development Center, to help inform their members," the manager wrote. "Two webinars were also hosted to share more information about GovConnectIowa. If taxpayers did not receive these emails, we strongly encourage subscribing to updates to ensure they receive future notifications and news." She also said "Welcome Letters" about the change were sent to existing tax permit holders.

Another manager in the agency called our complainant and had a detailed discussion about the new website, how to use it and how to make payments by mail. We called the man the next day. He confirmed hearing from a manager and said it was very helpful.

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State Government

Fixing an Unemployment Mix-up



Through fiscal year 2022, our office continued to receive a significant number of COVID-related unemployment complaints. As the number of new complaints fell from its peak in 2021, we were able to provide more individualized assistance on these cases. Many of the Iowans calling us were informed by the agency administering unemployment claims that they had never qualified for the benefits they were encouraged to apply for. Letters simply arrived, sometimes nearly a year later, saying they owed hundreds or even thousands of dollars back to the State of Iowa.

Understandably, almost all of these Iowans were at a loss as to how they could repay such amounts. One man told us he "used the funds for rent and food, [he] didn't bank the assets to pay them back."

Many affected individuals qualified for a waiver of the COVID-related funds. More specifically, if someone received federal COVID-related unemployment benefits they didn't actually qualify for, the debt can be waived if the mistake wasn't their fault and repayment would cause them financial hardship.

The Iowa man who hadn't banked his unemployment benefits filed an application waiver, but was informed he now owed even more—$12,755—nearly double the initial overpayment amount of $6,600. This was despite him being encouraged to file for benefits every step of the way until he received notice he had been mistakenly approved and needed to return all of that money.

When our office reached out to the agency to understand what had happened, they quickly confirmed there had been an error.

While the man was eligible for Pandemic Unemployment Assistance (PUA) and additional Federal Pandemic Unemployment Compensation (FPUC) funds, he did not qualify for regular unemployment benefits, which he was mistakenly awarded. However, the benefit amounts were identical. That meant he never received any money he wasn't entitled to; it was just entered under the wrong program.

The agency rescinded the overpayment notice and transferred the funds into the correct program the very next day, wiping out all $12,755 of his "overpayment."

State Government

Helping a Woman Get Credit for Repaying Her Debt to Society

When Iowans are convicted of a crime, they're asked to repay their "debt to society." This debt comes in many forms, including restrictions on day-to-day privileges like driving.

However, if the state of Iowa asks someone to repay their debt, it is only fair that Iowa keeps an accurate account of what's been repaid and provides that information to the affected person.

For one woman with a history of traffic tickets and moving violations—including one conviction for operating while intoxicated—her decision to buckle down and repay those debts hit a strange roadblock.

One of the many requirements Iowa placed on her was to use an "Intoxilock" in-car breathalyzer system for one year. The company that installed and monitored the device issued a receipt proving installation on January 21, 2021.

In January of 2022, she called the company to have them remove the system. They informed her she needed a letter from the State of Iowa confirming it no longer had to be in her car. The woman didn't see anything out of the ordinary with this and called her local agency office.



In that call, a later call, and two separate visits to their office, she received no less than four different explanations for why they couldn't give her a letter saying the breathalyzer system could be removed. Further, they informed her she was only eligible for "credit" on the breathalyzer system for 36 days across April and May of 2021. The agency could not explain why those 36 days were any different or special.

Agency staff variously said it was because she had a driving-while-barred ticket; she didn't have high-risk SR22 insurance (even though she had it for more than a year, as required); she had a probation violation (even though she had never been on probation); and finally because the County Attorney's office must have missed an old ticket for a bad vehicle registration when they set her up on a payment plan.

None of these explanations had anything to do with the breathalyzer. Our office reached out to the agency and they agreed it was strange that there was only partial credit from April and May of 2021, despite an installation date of January 21. After sending the woman away empty-handed four times, the agency agreed to correct the error and issue a letter confirming that at least this portion of her "debt" had been paid in full.

Managed Medicaid

Medicaid Estate Recovery Issue

The State of Iowa is required by federal law to recover any Medicaid benefits paid out to any Medicaid beneficiary who is 55 years old or older, or any age if they are permanently in an institution. The recovery is made from the estate of deceased Medicaid beneficiaries. Estate recovery has been required since 1993.

Prior to 2016, the amount recovered by the State of Iowa consisted of what was spent on the Medicaid member for services they actually received. In 2016, private Managed Care Organizations (MCOs) began administering Medicaid in Iowa. Iowa pays the MCOs a monthly capitation payment for each member. The capitation payment varies and is based on the member's program eligibility group. For example, an Elderly Waiver member's capitation payment may be over $3,000 per month. The capitation payment is collected by the state's Estate Recovery program whether or not the member actually received services and the payment begins the first month the member is eligible.

Our office has received multiple complaints from family members who received notices from Estate Recovery after their loved ones have died. The families claim they were not aware that Medicaid benefits would have to be paid back, and they were not aware their loved ones' estates would be paying back a capitation payment rather than the services actually received by the Medicaid member.

One complainant said her mother's estate owed $77,199.93 but the services her mother received amounted to $27,242.

Another complainant told us that her father's estate owed $20,000 and the only service he received was respite in the amount of $43.

A third complainant said his stepfather's estate owed $11,122.81 and the only service received was $184.58 in home-delivered meals.

A fourth complainant said her mother's estate owed $226,000 and the services received amounted to around $50,000.

Each of these complainants told us they never would have signed their family member up for services if they had known how much the estate would have to pay back.

Our office asked the agency that administers Medicaid to review and update the information which they provide to applicants and their families so they can make informed decisions and know what to expect regarding estate recovery.

The agency notified our office that information was updated on their website, in the application for Medicaid, and in Home and Community Waiver (HCBS) brochures. A PowerPoint about Estate Recovery was created by the agency and provided to agency member services staff and MCO member services staff. Soon, estate recovery information will be in MCO assignment letters and MCO choice letters. The agency reached out to Area Agencies on Aging to offer trainings about Estate Recovery. The agency also reached out to Iowa Legal Aid and the Long-Term Care Ombudsman's office asking them to update the information they provide about estate recovery.

Managed Medicaid

Illegal Balance Billing by Providers Continues

In last year's annual report, our office pointed out that we had received multiple complaints from Medicaid members about their providers billing them directly. As we stated at that time, providers who are enrolled with and accept Medicaid are generally prohibited from billing Medicaid members.

We noted last year that members on the Qualified Medicare Beneficiaries (QMB) program have even more protection. QMB is a program for persons who are entitled to Medicare Part A and are eligible for Medicare Part B; have incomes below 100 percent of the federal poverty level; and have been determined to be eligible for QMB status by their state Medicaid agency. Medicaid pays the Medicare Part A and B premiums, deductibles, co-insurance and co-payments for members on the QMB program.

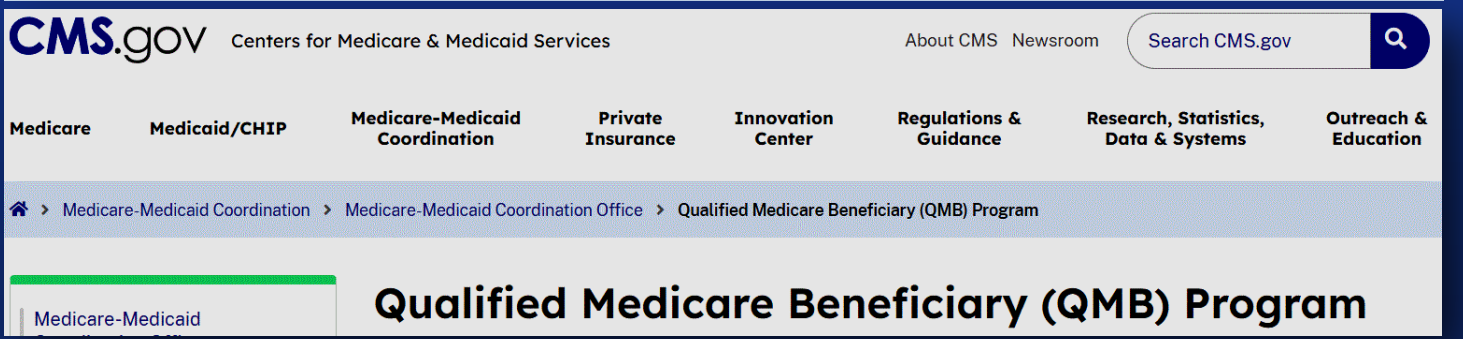
The Centers for Medicaid and Medicare (CMS) notes that Section 1902(n)(3)(B) of the Social Security Act (the Act), as modified by section 4714 of the Balanced Budget Act of 1997, prohibits Medicare providers from balance-billing people on the QMB program for Medicare cost-sharing, and providers are prohibited from billing QMB program members for Medicare cost-sharing, including deductible, coinsurance, and copayments.

For further information, please see: https://www.medicare.gov/Pubs/pdf/12039-Qualified-Medicare-Beneficiary-Program.pdf

Despite these state and federal protections, our office continues to receive complaints from Medicaid members who are billed by providers. The majority of these complaints continue to be from members on the QMB program. One of the members that we were able help last year was billed again this year by the same provider. We were able to help the member get the agency to resolve this issue again, along with similar complaints from other members.

Since our office does not have authority or jurisdiction to review complaints against private providers, we will contact the MCO and/or the Medicaid agency for review and resolution of complaints about providers billing members. QMB members can also call 1-800-MEDICARE (1-800-633-4227) for assistance if they receive bills from providers.

It is important that Medicaid and QMB program members contact Iowa Medicaid before paying any bills they receive. It is very difficult to obtain reimbursement once the member pays a bill they should not have.



Managed Medicaid

CDAC Provider is Unpaid for Over Three Weeks Due to Inappropriate Claim Denials

One of the services available to most Home and Community Based (HCBS) Waiver members is Consumer Directed Attendant Care (CDAC). A CDAC provider does things for a member that the member would normally do for themselves if they could, such as getting in and out of bed, getting dressed, cooking, cleaning, and shopping.

One of our complaints this year was from a CDAC provider who went unpaid for over three weeks. She received "zero dollar" checks with descriptions stating she was an out-of-network provider. The MCO stated that at first there was an issue with the provider's profile with the Electronic Visit Verification (EVV) contractor. CDAC providers are required to use EVV to sign in and out of services for members, and claims are sent from the EVV contractor to the Managed Care Organization.

Once the EVV issue was resolved, the provider's claims were inappropriately denied by the MCO and had to be reprocessed. After our involvement, the MCO ultimately corrected the problems and began paying the provider timely.

Medicaid Process of Changing Dental Providers Proves Difficult



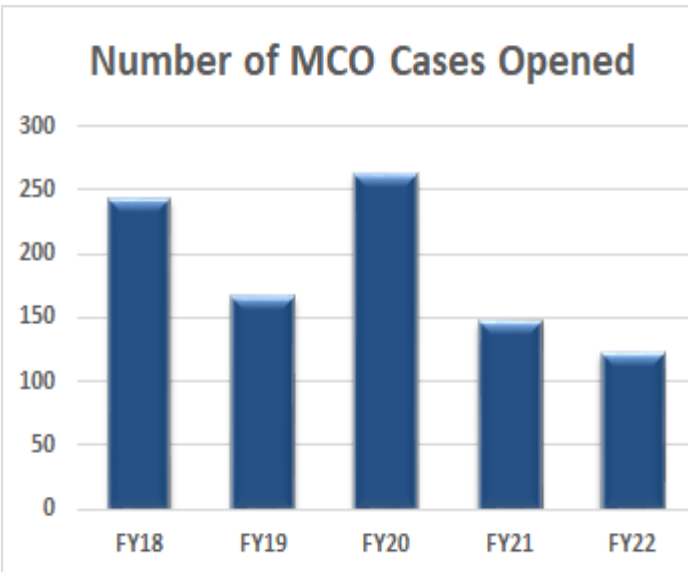
Generally, a Medicaid member cannot change their dental plan or health care managed care organization except during the annual choice period. However, if a member has good cause to change plans, including when their provider is with another plan, there is a process to do that.

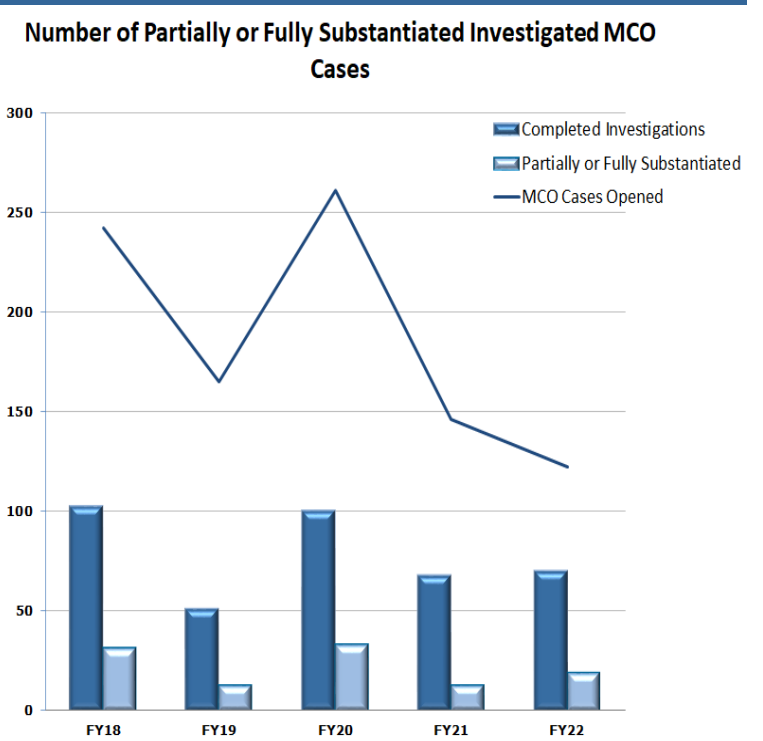
The agency's website explains the process for changing MCO or dental plans.

Two families contacted our office after trying, without success, to change their dental managed care plan. Both cases involved children needing dental care. The families needed to switch dental plans because their children's dental providers were enrolled with a different dental plan. In each of these cases, agency member services and the dental plan staff had referred the families back and forth between each other rather than following the established process for changing plans.

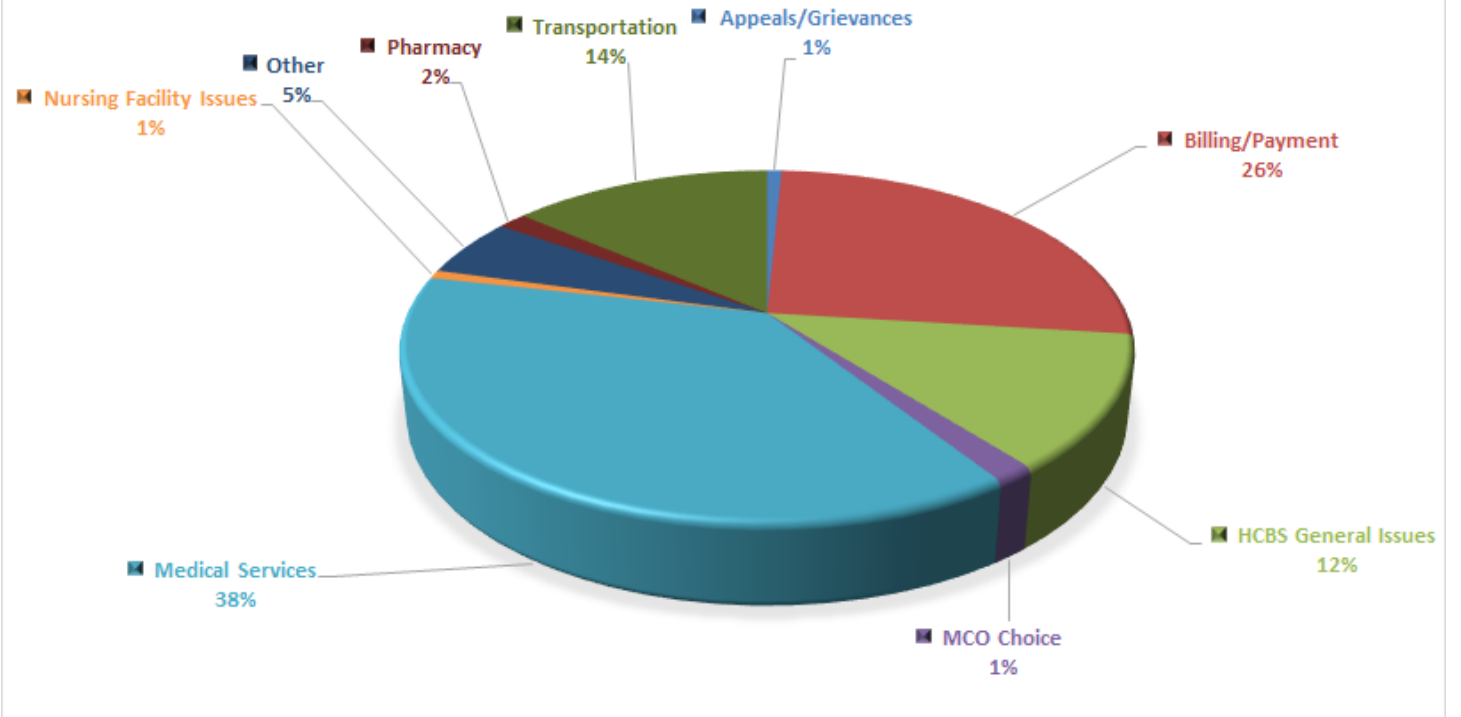
After we got involved, the agency's "dental contract manager" worked with the dental carrier and member services to ensure that the process for filing grievances and changing plans was working as it should. The Medicaid members were ultimately switched to the dental plan they needed to receive dental care.

Managed Medicaid - Statistics

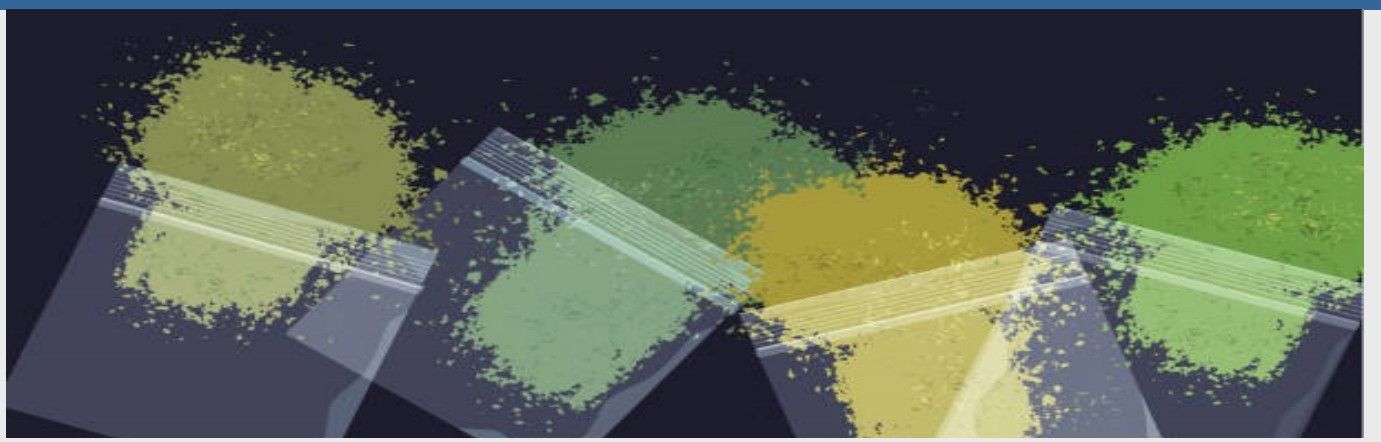




MCO Cases by Category



Corrections and Jails



Drugs in the Prisons—An Update

K2

K2 is a synthetic drug designed to mimic the effects of tetrahydrocannabinol (THC), the psychoactive ingredient in cannabis. K2 can be dangerous and have serious side effects. It is also very easy to smuggle into prisons and jails and, for that reason, has become a huge problem for a state agency in charge of prisons.

A sheet of K2-infused paper can be bought for $50 and cut into hundreds of doses for resale. It can be sprayed onto dried plant material or paper and smoked. One Iowa prisoner collected several thousand dollars selling K2 in prison. We understand the challenge this illicit product has presented for prison staffs.

While there have been no reports of death in Iowa prisons related to its use, many inmates under the influence have become extremely ill, requiring trips to hospitals. The drug has also caused inmates to act bizarrely and violently to the point where staff have been assaulted.

This problem has forced agencies to make changes to several practices and policies.

Drug Testing Challenges

As we reported last year, drug field tests used by the state's prisons were known to produce false-positives. Due to the test's presumptive nature, the field test manufacturer's instructions included an advisory directing laboratory confirmation testing. Despite the advisory, the agency did not provide confirmation testing. Based on our research, a positive field test only presumes there is an illicit drug present and has a nearly 40 percent chance of returning a false positive. As we continued to receive complaints about the use of these unreliable field tests, we communicated our concerns to the agency and suggested the field tests be followed up with confirmation tests, per the field test manufacturer's instructions.

The agency had told us confirmation tests on the K2 field tests may only be completed by another state agency, and they were concerned that such a request would be excessively burdensome to that agency. The agency admitted the field tests are not perfect; we know of one false-positive that was triggered by a prison's own printer ink.

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Corrections and Jails

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We expressed our concern about the field tests being the sole basis for disciplinary reports. To support a positive field test, we believe there should be corroborating evidence present such as a confirmation test, medical verification of drug use, an admission of use, or a reliable witness. The field test manufacturer's warning reads:

> NOTE: ALL TEST RESULTS MUST BE CONFIRMED BY AN APPROVED ANALYTICAL LABORATORY! The results of this test are merely presumptive. NARK® only tests for the possible presence of certain chemical compounds. Reactions may occur with, and such compounds can be found in, both legal and illegal products. This test must be administered following its specific instructions and may be used in conjunction with other reagents in the NARK® II Sequential Testing System.

Relying on the field test alone means some inmates are unfairly subjected to isolation cells, loss of parole consideration, loss of a classification status that took them up to a year or more to achieve, and other impacts.

We shared an article with the agency about a drug test lawsuit in Massachusetts. The main theme of the lawsuit is that field tests are only intended to be screening tools and should be confirmed before punishment is imposed. The court ruling said the field test returns false-positive results approximately thirty-eight percent of the time – almost no better than a coin flip, according to one judge. The ruling also supported our suggestions about the need for confirmation testing to supplement the field tests, per the manufacturer's advisory.

Earlier this year, we learned the agency had suspended use of the questionable field test. We have also been told positive tests alone are now expected to have supporting evidence.

Communications Restrictions

Another problem brought to our attention was that inmates who were suspected of K2 possession were receiving an automatic 90-day communications restriction by prison administration. We understood the risk K2 posed and that preliminary steps must be taken to address the danger; but once an investigation is concluded and there is no evidence the privileges were misused, we believe the restrictions should be lifted. These administrative restrictions were bring enforced even when an administrative law judge (ALJ) made a hearing decision in favor of the inmate. The restriction meant the inmate could not use the telephone, receive/send mail or omail (prison email), or have visits with anyone other than their attorney or our office. We felt this practice was contrary to prison policy, which stated an inmate could be restricted from phone/mail/visits with a specific person if evidence suggested the privilege was abused and posed a risk to the security of the institution. A blanket prohibition of all non-legal communications seemed like an overreach of policy.

(Continued on page 19)



Corrections and Jails

(Continued from page 18)

After we brought this issue to the agency's attention, the agency made a policy change that required evidence showing outside communication was used before any forms of communication restrictions could be imposed.

Innovative Solutions to a Difficult Problem

In an effort to prevent K2 from entering prisons, the agency made some important changes to its policies.

One change was to the incoming publication policy. Previously, each prison had its own list of approved vendors, and third parties could have books mailed to the inmate from stores. It was discovered that contraband could easily be placed inside the pages of a book shipped from storefront book vendors. Now, there are just two approved vendors – both online publication warehouses. Inmates may now order directly through the prison business office, or a third party may purchase books online and have them sent directly from the vendor to the prison.

We commend the agency for developing a process which addresses a security issue while continuing to allow third parties to purchase publications for inmates.

Separately, the agency changed its policy on incoming mail. It now requires all non-legal mail to be sent to a third-party company for processing. The non-legal mail is opened and scanned into a digital color copy and then sent in bulk to the prisons for distribution. The original mail is temporarily stored and then destroyed. It is too soon to tell if this effort has or will reduce the illicit drug's presence, but it is a creative solution to a difficult problem. Inmates continue to receive the content of their mail, while an opportunity to smuggle K2 into the prisons is now closed.

K2 is a nationwide prison and jail problem which has forced many penal agencies to get creative in regard to their procedures that may be an avenue for contraband to enter their facilities. While there continue to be challenges relating to K2, the progress that has been made is encouraging.

Extra Miler—Black Hawk County Sheriff Organizes Statewide Training for Handling Records Requests

We want to recognize Black Hawk County Sheriff Tony Thompson for spearheading a statewide training program for police on handling records requests from the public. Sheriff Thompson noted correctly that responses and associated fees for police reports vary widely, which causes confusion and consternation for officers and citizens alike. He recruited experts from various state agencies to hold four sessions around the state in May 2022 to offer greater clarity on what records must be released and how much can be charged.



Corrections and Jails

When "Keep Separate" Policies Go Wrong

There are times when a complaint is brought to the Ombudsman that may not have merit, but upon review, a different problem is recognized. When this happens, the Ombudsman may, on his own motion, investigate that matter. This was the case when a prison inmate complained to the Ombudsman that he would "never stay out of trouble" as long as he was in the same prison as his "keep separates."

A "keep separate" (KS) is a term used by prison administrations to identify enemies. This helps officials create levels of separation for inmates to enhance safety and security and assist in transfer and housing decisions.

One inmate told us he had recently been assaulted by one of his KS and he was set up for failure by being housed in the same prison with him. The inmate wanted to be transferred to where he had no KS.

The Ombudsman reviewed the circumstances and found that the inmate had an unusually high number of KS. The agency tried to keep him from being housed at the same prisons as his multiple KS, but the inmate committed so many major rule violations, he had to be managed at a higher security prison where he had a KS. The inmate's complaint was not substantiated.

This complaint, however, alerted the Ombudsman to the fact that the inmate and his KS came into contact with each other, even though they were different statuses; one was "general population" and the other was "protective custody." These statuses should never be in the immediate vicinity of each other



(regardless of whether a KS exists or not). The Ombudsman contacted the Deputy Warden for a copy of the investigation so we could understand what had gone wrong where an inmate was left with stitches and blurred vision.

We learned that no investigation had occurred because there was no procedure in place for escorting "protective custody inmates" into an area that general population inmates also frequent — the Health Services department in this case.

The prison quickly developed a procedure to ensure staff were aware of any KS issues and that the area would be cleared of all non-protective custody inmates prior to and during the escorts.

Corrections and Jails

A Delay, A Dodging, and a Change

An inmate contacted our office after she experienced issues with a grievance she submitted. Due to no fault of her own, her second appeal to agency higher-ups was denied as untimely. When we reviewed the circumstances, we discovered that her appeal was mailed on July 8, but the agency did not receive the letter until July 16. We questioned what could have caused this delay, and ultimately found that there were USPS delays during that time period, which impacted the delivery of her appeal.

Due to the delay, the agency determined the appeal was untimely and refused to consider the appeal. We questioned the fairness of this decision and recommended that the agency provide the inmate a response and modify its policy so this situation would not happen again. We recommended the agency change the language of the policy so that an appeal is deemed timely based on postmarks, rather than the date the agency receives the envelope. This would eliminate outside influences such as USPS delays.

Although the agency initially resisted both of our recommendations, it later agreed to modify the policy. Unfortunately, the agency refused to provide a response to the inmate who complained to us. The agency initially stated that the matter required no further review because a review had already been conducted at the prison level. We pointed out, however, that the inmate had raised additional questions and issues in the grievance appeal, and she deserved an independent response. We asked what was the point of appealing to higher officials if they simply rubber-stamp a prison's denial? Ultimately, the agency did conduct additional investigation into the inmate's issues and provided our office with a response to the concerns. The inmate, however, never received the response directly from the agency.

Inmate Helps Prevent an Attack

The Office of Ombudsman is best known for conducting oversight and as a resource for Iowans seeking all kinds of assistance navigating the channels of state and local government. But sometimes we serve other functions, too.

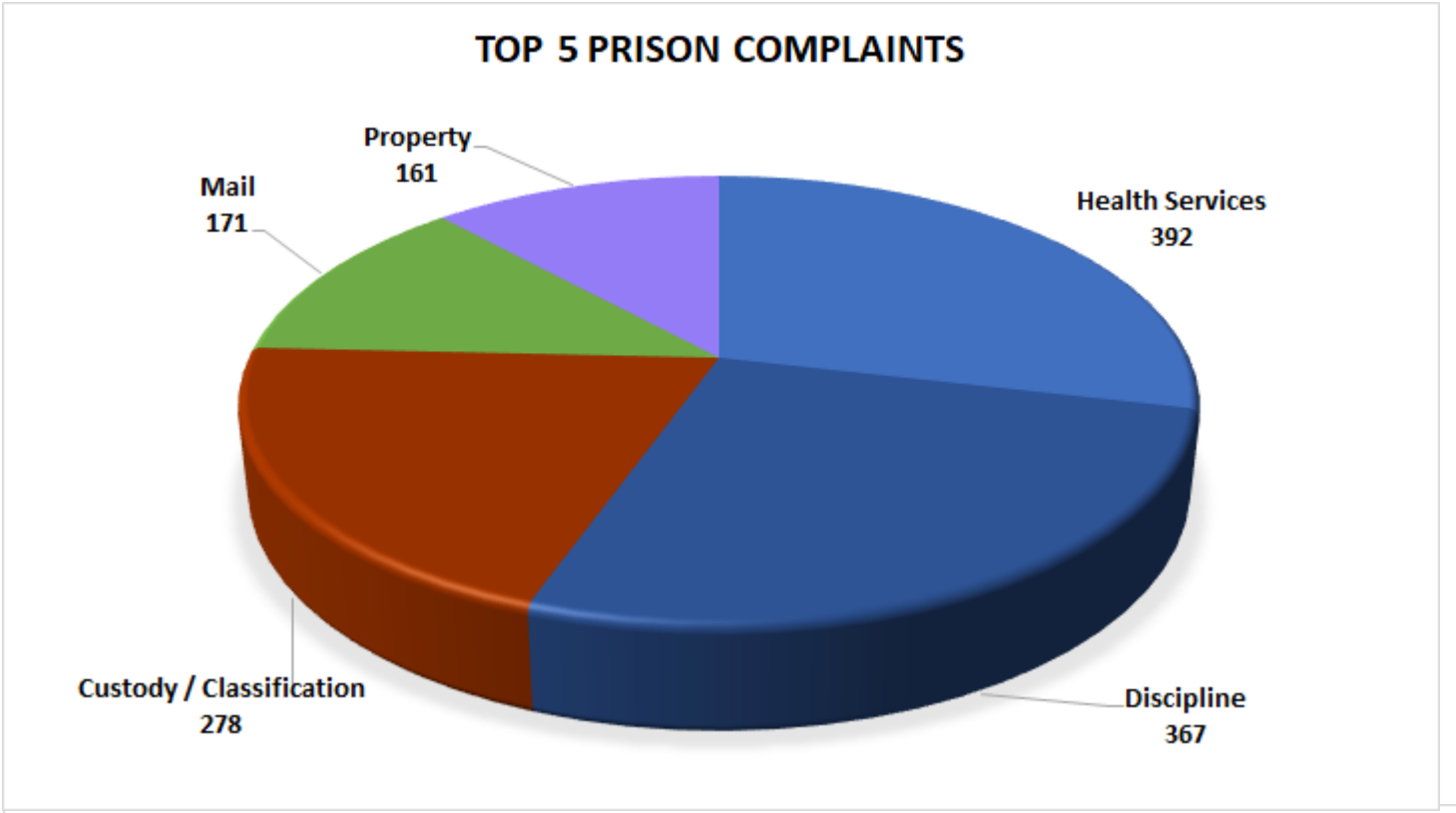
One example of this occurred when an Iowa prison inmate contacted our office. To everyone else in the prison, this was a normal, almost daily occurrence. He's had several cases with us over the years, including a few that were ongoing at the time.

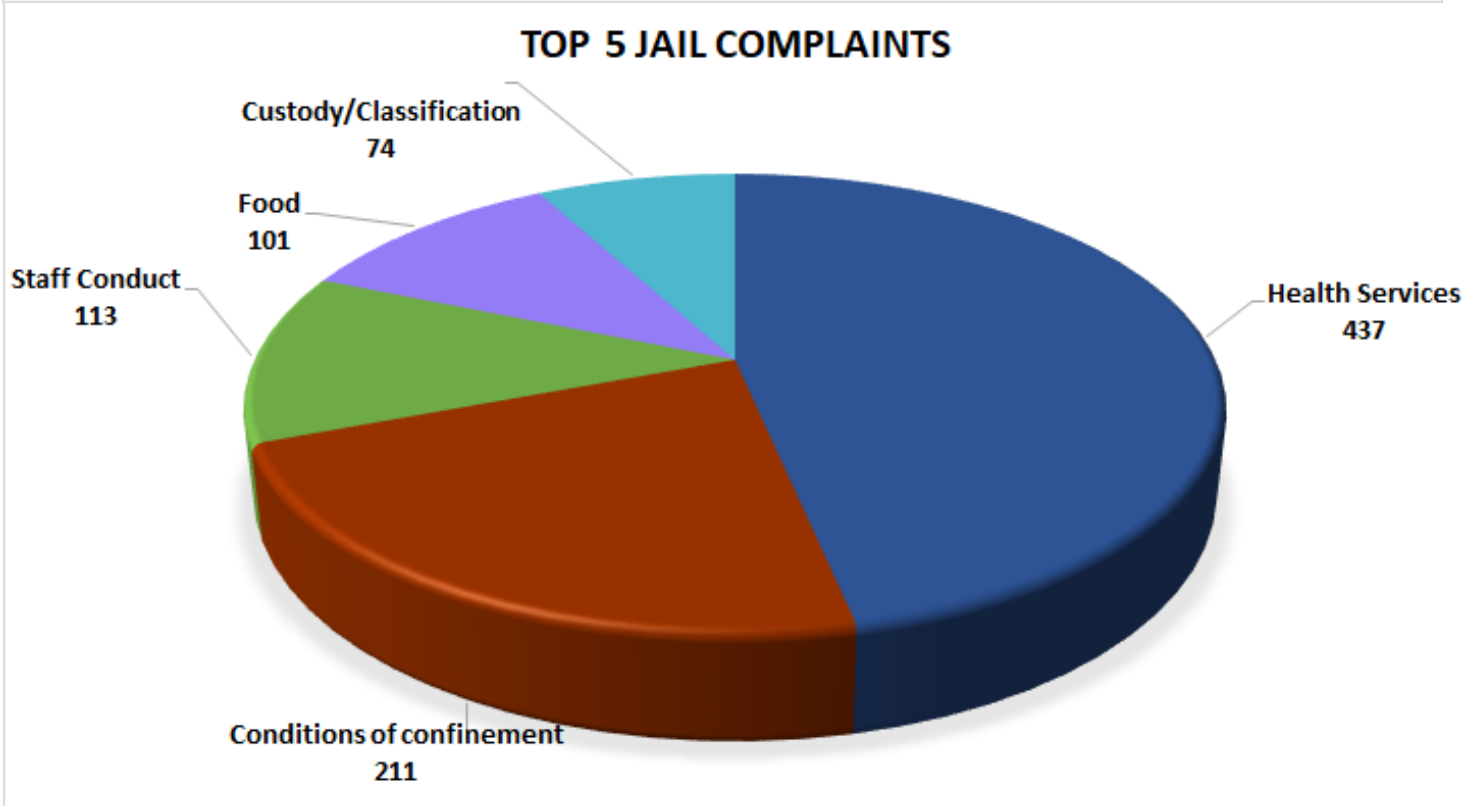
But on this call, he wasn't making a complaint about prison staff or looking for assistance for himself. He was calling to say he overheard another inmate's plan to assault a staff member and attempt an escape in the aftermath.

The caller knew that if he walked up to staff to report what he heard, he may well face retribution from other inmates. But despite his various complaints against prison staff, he didn't feel right letting something like that just happen.

In response, our office contacted the prison, which was able to immediately take appropriate precautions and investigate the matter.

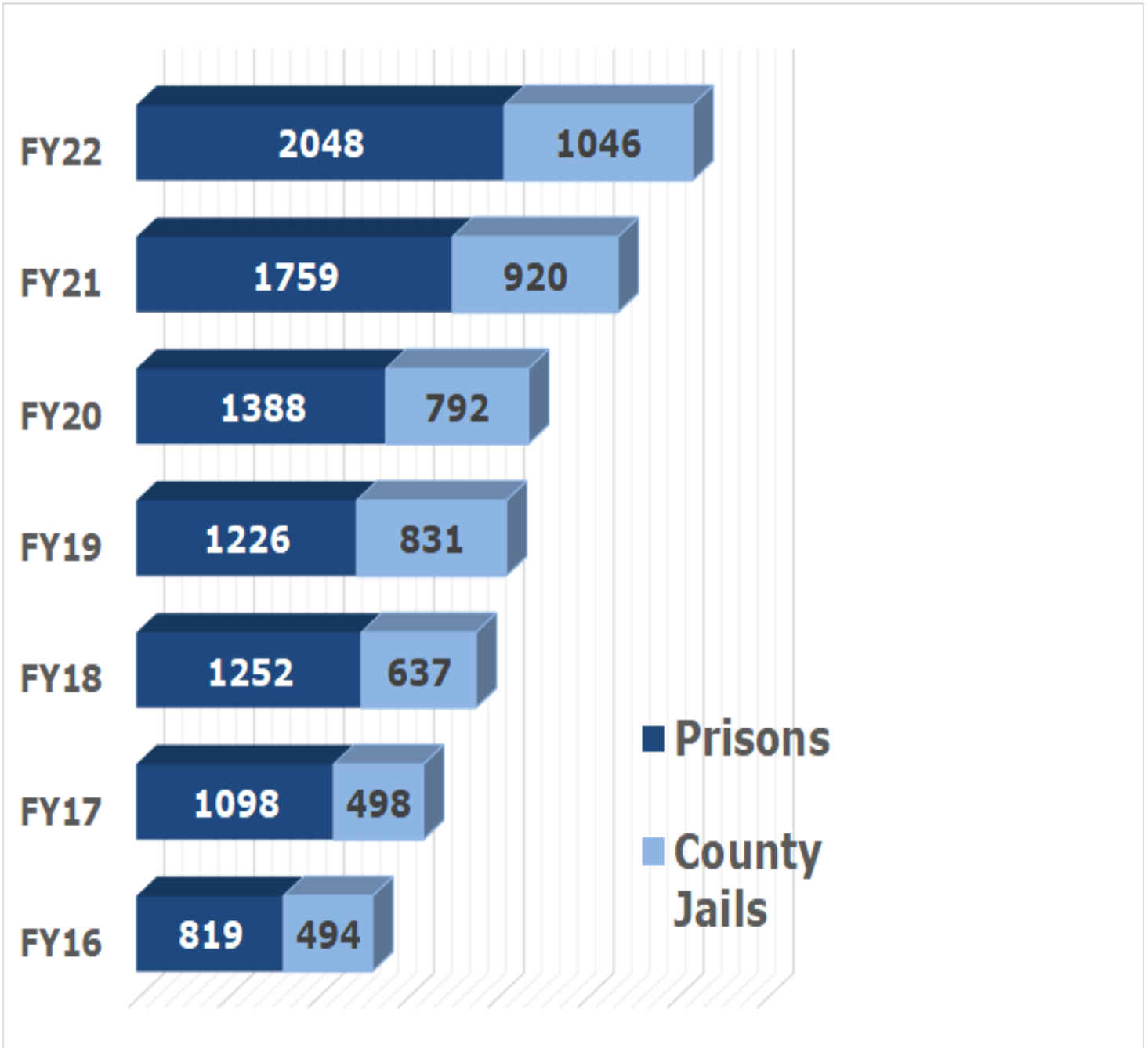
Corrections and Jails - Statistics





Corrections and Jails - Statistics

NUMBER OF PRISON AND COUNTY JAIL COMPLAINTS

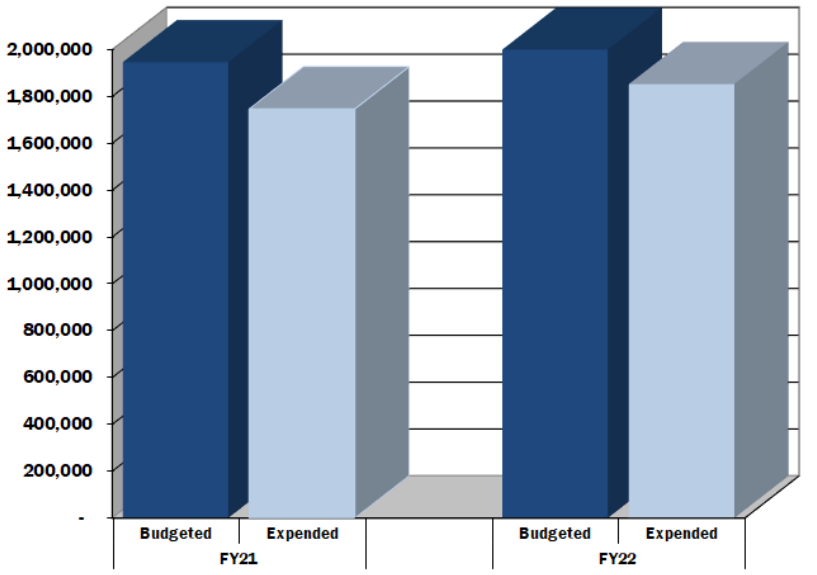


Office of Ombudsman
FY21 and FY22 Financial Information

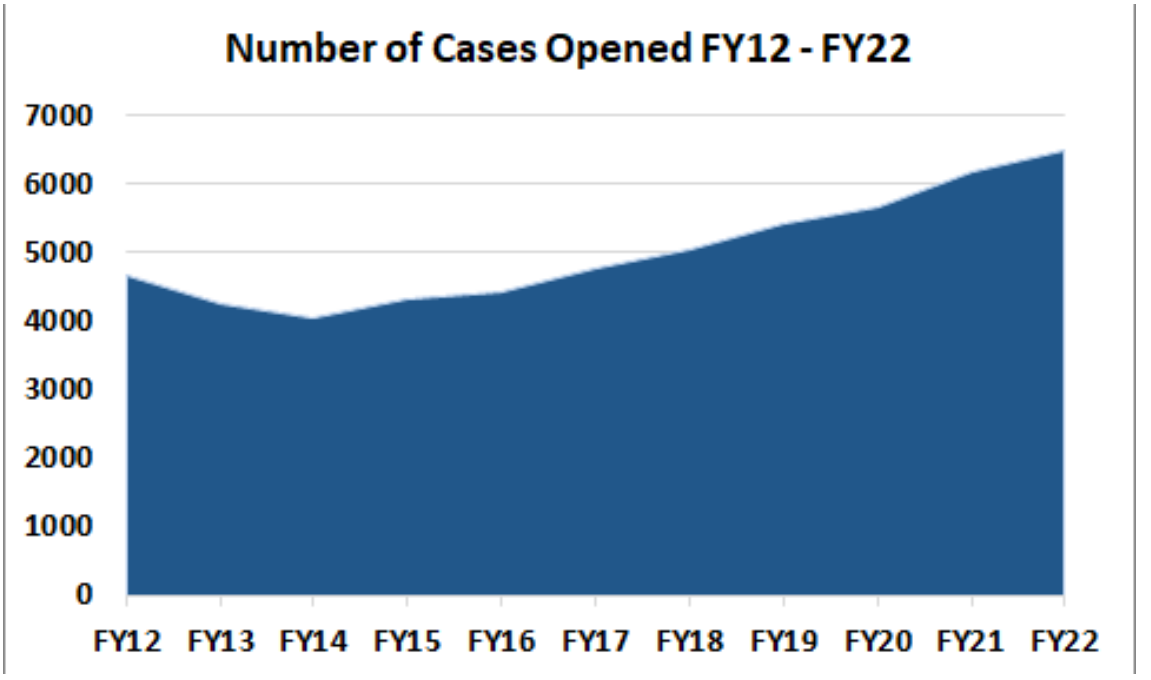
Office of Ombudsman

FY21 and FY22 Financial Information

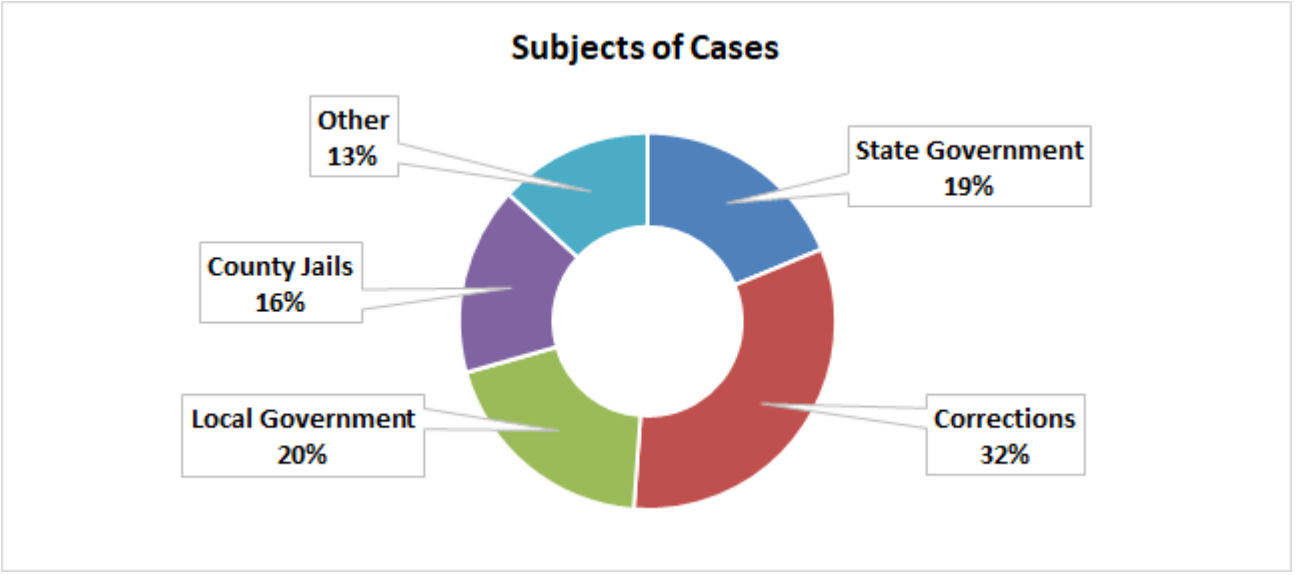
Presented to meet the requirement that state government annual reports to the Legislature include certain financial information.



Statistics



Subjects of Cases



What we can investigate:

- City governmental departments
- County government departments
- Most state agencies
- Public school districts
- Intergovernmental organizations
- Government contractors doing child-welfare or juvenile-justice work
- Prisons, jails and work-release facilities

What we can't investigate:

- The Governor and staff
- The Legislature and staff
- Judges, court clerks and judicial staff
- Most public employee-employer disputes
- Federal government
- Private entities or businesses

Agency	Jurisdictional Complaints	Jurisdictional Information Requests	Non-Jurisdictional Cases	Non-Jurisdictinal Information Requests	Special Projects	Total	Percentage of Total
State Government							
Administrative Services	6	1	1	0	0	8	0.12%
Aging	3	90	0	0	0	93	1.43%
Agriculture & Land Stewardship	0	0	0	0	0	0	0.00%
Attorney General/Department of Justice	9	1	0	0	0	10	0.15%
Auditor	2	0	0	0	0	2	0.03%
Blind	1	0	0	0	0	1	0.02%
Civil Rights Commission	12	0	0	0	0	12	0.19%
College Aid Commission	1	0	0	0	0	1	0.02%
Commerce	11	5	0	0	0	16	0.25%
Corrections	1948	100	0	0	3	2051	31.63%
County Soil & Water Conservation Districts	0	0	0	0	0	0	0.00%
Cultural Affairs	0	0	0	0	0	0	0.00%
Drug Control Policy	0	0	0	0	0	0	0.00%
Economic Development	1	0	0	0	0	1	0.02%
Education	6	1	0	0	0	7	0.11%
Educational Examiners Board	1	0	0	0	0	1	0.02%
Ethics and Campaign Disclosure Board	0	0	0	0	0	0	0.00%
Executive Council	0	0	0	0	0	0	0.00%
Human Rights	0	0	0	0	0	0	0.00%
Human Services	510	33	0	0	0	543	8.37%
Independent Professional Licensure	7	0	0	0	1	8	0.12%
Inspections & Appeals	29	3	0	0	0	32	0.49%
Institute for Tomorrow's Workforce	0	0	0	0	0	0	0.00%
Iowa Communication Network	0	0	0	0	0	0	0.00%
Iowa Finance Authority	12	0	0	0	0	12	0.19%
Iowa Lottery	0	0	0	0	0	0	0.00%
Iowa Public Employees Retirement Systen	2	0	0	0	0	2	0.03%
Iowa Public Information Board	1	0	0	0	0	1	0.02%
Iowa PBS	0	0	0	0	0	0	0.00%
Law Enforcement Academy	2	0	0	0	0	2	0.03%
Management	3	1	0	0	0	4	0.06%
Municipal Fire & Police Retirement Systen	0	0	0	0	0	0	0.00%
Natural Resources	3	2	0	0	0	5	0.08%
Office of Ombudsman	5	50	0	0	6	61	0.94%
Parole Board	37	9	0	0	0	46	0.71%
Professional Teachers Practice Commissio	0	0	0	0	0	0	0.00%
Public Defense	1	1	0	0	0	2	0.03%
Public Employment Relations Board	0	0	0	0	0	0	0.00%
Public Health	9	2	0	0	0	11	0.17%
Public Safety	15	0	0	0	0	15	0.23%
Regents	13	1	0	0	0	14	0.22%
Revenue & Finance	33	1	0	0	0	34	0.52%
Secretary of State	1	1	0	0	0	2	0.03%
State Fair Authority	1	0	0	0	0	1	0.02%
State Government (General)	141	39	0	0	1	181	2.79%
Transportation	29	5	0	0	0	34	0.52%
Treasurer	3	0	0	0	0	3	0.05%
Veterans Affairs Commission	5	0	0	0	0	5	0.08%
Workforce Development	80	9	0	0	0	89	1.37%
State Government Non-Jurisdictional							
Governor	0	0	7	2	0	9	0.14%
Judiciary	0	0	132	30	0	162	2.50%
Legislature and Legislative Agencies	0	0	6	2	0	8	0.12%
Governmental Employee-Employer	0	0	8	0	0	8	0.12%
Local Government							
City Government	533	29	0	0	0	562	8.67%
County Government	1318	23	0	0	0	1341	20.68%
Metropolitan/Regional Government	6	2	0	0	0	8	0.12%
Community Based Correctional Facilities/P	308	39	0	0	0	347	5.35%
Schools & School Districts	45	1	0	0	0	46	0.71%
Special Projects	0	0	0	0	16	16	0.25%
Non-Jurisdictional							
Non-Iowa Government	0	14	224	44	0	282	4.35%
Private	0	23	333	29	0	385	5.94%
Totals	**5153**	**486**	**711**	**107**	**27**	**6484**	**100.00%**

STAFF

Ombudsman Bernardo Granwehr

Senior Deputy Ombudsman Bert Dalmer

Legal Counsel Andy Teas

Assistant Ombudsmen

Phillip Brown

Linda Brundies

Jeff Burnham

Jacob Hainline

Angela Long

Angela McBride

Eleena Mitchell

Jason Pulliam

Rebecca Stout

Kinsey Ward

Kyle White

Administrative Staff

Carmen Gomez

Erin Rouse

Office of Ombudsman

Ola Babcock Miller Building

1112 East Grand Avenue

Des Moines, IA 50319-0231

(888) 426-6283 (515) 281-3592

Fax (515) 242-6007 TTY (515) 242-5065

E-Mail: ombudsman@legis.iowa.gov

www.legis.iowa.gov/ombudsman

Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, except on designated state holidays.

Robert D. Ray
Governor of Iowa
First Inaugural Message
January 16, 1969

"As a step in combatting the perilous impersonality of government and in giving citizens a renewed sense of direct participation in their government, the ***office of ombudsman should be established****, subject to appointment by the Governor and confirmation by the Senate. The concept has a 160-year history under consideration in more than half of our fifty states. An ombudsman would serve as a channel for redressing individual grievances which are beyond the reach of present court procedures and leave many people voiceless. Additionally, the ombudsman would analyze grievances and seek better administration of public agencies. He would improve the performance of legislative functions through identification of recurring problems which may require corrective legislation. Finally, experience has shown that an ombudsman improves the morale of public servants and increases public confidence in them, by ventilating unfounded criticism and rejecting unfounded complaints."*