

El Paso County Sheriff's Office's tactic for paying mental health tab raises questions

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The El Paso County Sheriff's Office has confirmed it uses proceeds from the jail commissary and phone service to help pay for mental health services.

Courtesy photo

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With the purchase of every \$7 phone call and overpriced pack of ramen noodles, people held at the El Paso County jail are chipping away at the jail's mental health care bill — a seemingly novel spin on cost-cutting that critics say is unethical and possibly illegal.

The El Paso County Sheriff's Office has confirmed that the office dips into proceeds from jail commissary and phone services to defray expenses from its private medical services contract. Since 2019, the office has spent nearly \$1.8 million from the so-called inmate commissary fund to pay down its health services contract, earmarking the spending for mental health, according to figures the office provided to The Gazette.

Word of the little-known practice irked advocates for inmates and their families, who called it a cash grab from a vulnerable population, cynically deployed as a health care initiative.



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“It’s ridiculous to me — astonishing, actually — that the jail would say this is somehow being done for incarcerated people’s own good,” said Wanda Bertram of the Prison Policy Institute, a Massachusetts-based nonprofit that advocates for people in jails and prisons. She said she was unaware of a precedent for using commissary funds to pay for mental health care treatment. It’s unclear if revenue-bearing contracts are being used elsewhere in Colorado to defray the costs of jails’ legal obligations to provide mental health care to people in custody.

El Paso County jail halts paper mail to inmates, sparking complaints

The issue highlights a controversial practice by for-profit correctional vendors, which frequently offer commissions, or kickbacks, to jails and prisons as incentives to secure new business — a system that critics say drives up phone and commissary rates, separating poor inmates from their loved ones and taking financial advantage of people in dire circumstances.

The Prison Policy Initiative questioned whether the jail’s use of commissary proceeds violated Colorado law, given that all inmates are being charged for a service that only some of them use — what it said could be construed as “unauthorized fees.”

The sheriff’s office defended the program in a written statement, calling it both lawful and consistent with the sheriff’s operating manual.

“The sheriff’s office always considers the legality of its actions and seeks to make all policies in accordance with the law,” the statement said, arguing that the mental health services were equally available to all inmates, even those without mental health diagnoses.

Despite those assurances, the sheriff’s official responsible for the budget told the newspaper he has asked the El Paso County Attorney’s Office to revisit a 2018 legal opinion that blessed the spending and is awaiting its response.

“I want to make sure we’re doing things appropriately according to the law,” said Bureau Chief Joe Roybal, who wasn’t involved in launching the program. He asked for

legal guidance “a couple months ago,” prior to the newspaper’s inquiries, he said.

At the El Paso County jail, local phone calls can cost up to 44 cents per minute, contract documents show, and a pack of ramen that normally goes for a few pennies each can cost more than 10 times as much in jail, according to online commissary price lists.

The costs tend to add up after time, said Georgianna Warszawski, who recently put \$100 on her grandson’s commissary account to make sure he can buy the better food available there.

But Mikolaj Warszawski, who has schizophrenia and bipolar disorder, grew upset that he was given a dirty mattress and destroyed it, she said, leading sheriff’s officials to remove all but \$9 in his account. It was a scary reminder of a trying time several years ago, when during a prior stay at the county jail, her grandson was deprived of his medication, causing him to lash out at guards leading to a difficult term in solitary confinement while in the grip of his illness.

During their last phone call, she didn’t have time to ask him for all the details behind his lack of phone calls, or even to find out if he’s getting his medication.

“He had 25 minutes that he could talk,” she said. “He likes hearing from me and hearing my voice to know he’s loved and cared for.”

Mike Peterson of Colorado City, whose wife is in custody at the El Paso County jail, told the newspaper last month that he pays hundreds of dollars per month in commissary and phone fees, a burden he said many inmates and their families are unable to shoulder.

📄 ACLU files lawsuit against El Paso County sheriff over record COVID-19 outbreak at jail

That leaves people in custody without community support that experts consider key to their morale and their chances of staying out of trouble, advocates say.

It’s common for jails to use the revenue they collect under the contracts to cover certain operating expenses, including maintenance, but applying them to the jail’s mental health tab is an approach Bertram of the Prison Policy Institute said she hasn’t seen anywhere else.

“It’s one of the most egregious uses of the money that I’ve ever heard of,” Bertram said, likening the practice to suddenly forcing public school students to start covering

the tab for their classes. An email sent to the County Sheriffs of Colorado seeking information about whether similar approaches are used in other jails wasn't answered.

The El Paso County Sheriff's Office paid \$629,000 in 2018, \$500,000 in 2019, and \$664,000 in 2020 to defray its roughly \$8.7 million contract with its for-profit medical provider, Wellpath of Nashville, according to figures supplied by the sheriff's office. The mental health portion of the Wellpath contract costs approximately \$1.3 million, Roybal said.

Colorado law allows counties to charge people for medical service in jail, but requires that charges be imposed on the person receiving services. By making everyone pay for services that only some people use, the sheriff could be running afoul of a law prohibiting Colorado sheriffs from charging unauthorized fees, the Prison Policy Initiative argued.

The sheriff's policy that governs the funds requires they be used for "educational, recreational and social benefit of the inmates" and to supplement "inmate needs," the sheriff's office said previously.

"The mental health services provided are for the benefit of all inmates," according to the sheriff's statement defending the spending. "Similar to a jail GED program or even a board game paid for by the commissary fund, inmates can choose to use these services and products or not."

The statement said the commissary fund is "not used to pay for medication, since not all inmates can benefit from medication."

That appeared to contradict information supplied by Roybal, however, raising further questions about the legality of the commissary spending on medical care.

Roybal said that in 2018 and again in 2020, the sheriff's office paid Wellpath more than \$100,000 over the \$500,000 budgeted for medical care because the jail had exceeded an agreed-upon maximum for medication costs.

Commissary funds were used to cover the costs of all medications that were issued above and beyond that cap, Roybal said.

The sheriff's office has budgeted \$500,000 in commissary fees to go toward the contract again in 2021, but that it can't predict if medication needs will exceed the limit under its contract, Roybal said.

"And if we'll continue that practice, I'm not sure of that yet," he said, referring to the use of commissary funds to cover medication costs over the contract's agreed-upon caps.

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The 2018 legal opinion that cleared the spending was drafted by attorney Lisa Kirkman and addressed to former sheriff's administrator Larry Borland, Roybal said.

Borland is retired and couldn't be reached. Kirkman was out of the office and unavailable for comment, according to El Paso County Attorney Diana May. May said she wasn't personally familiar with the arrangement, but declined to provide a copy of the opinion, citing attorney-client privilege. Roybal also declined to provide the opinion.

New details about the commissary spending surfaced after The Gazette examined broader changes in how the jail lets inmates communicate with people outside and keep themselves busy inside — which carry a powerful financial incentives for the sheriff.

As part of those changes, the sheriff banned people from sending letters, cards and photos to the jail, directing family members and friends to instead to send mail to a location in North Carolina where it is scanned. The mail is then made available to inmates for free on tablet computers, in what the sheriff's office calls an anti-drug smuggling measure.

The tablet computers, provided under contract with Global Tel Link of Reston, Va., in turn come with a variety of fee-based services, including the ability to download music and watch movies. Together with Global Tel Link phone service the deal raises up to \$1.5 million for the sheriff's office alone.

The policy restricting mail raised the potential for lawsuits against the sheriff, because inmates have a constitutional right to receive mail, even if they are being held for

disciplinary infractions, Mark Silverstein, legal director for the American Civil Liberties Union of Colorado, previously told the newspaper.

The jail modified its mail policy weeks after implementing the changes, the newspaper has confirmed.

In the wake of The Gazette's April 24 story about the mail change, a social worker said that several clients in jail told her they were suddenly being provided with photocopies of the cards and letters and allowed to keep them in their cells, improving their access to the correspondence.

The sheriff's office confirms it is now delivering photocopies of mail to inmates who request them, but said the change took place "about April 20," before the newspaper published its story.

The date provided by the sheriff's office was the same day the newspaper interviewed Lt. Christopher Rogers for details about the mail program. He did not mention the ability for inmates to receive photocopies while explaining how inmates receive mail.

After paper mail was banned in early April, Warszawski said she went nearly three weeks without hearing from her grandson — unusual behavior from someone who normally seeks her out for a sense of normalcy when he gets back into drugs or goes off his medications, a thorny cycle that has recurred since his symptoms began surfacing as a teenager, she said.

She's been trying to get back in contact to learn how he's doing, but says she struggles with navigating the Global Tel Link phone system, which seems to drop calls before she has a chance to use her keypad to accept the charges.

The expenses and difficulty of trying to stay in touch are irritating, but they're least of her worries, she said.

"I would like to know if he's on his medication," she said.

I cover legal affairs for The Gazette, with an emphasis on the criminal courts. Tips to lance.benzel@gazette.com

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