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Inmate Copay

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Any county may, by resolution adopted by a two-thirds vote of the county legislative body, establish and implement a plan authorizing the county jail administrator to charge an inmate in the county jail a copay amount for any medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider provided to the inmate by the county. A county adopting a copay plan must establish the amount the inmate is required to pay for each service provided. However, an inmate who cannot pay the copay amount established by the plan cannot be denied medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider. T.C.A. § 41-4-115(d).

If an inmate cannot pay the copay amount established by a plan adopted pursuant to T.C.A. § 41-4-115(d), the plan may authorize the jail administrator to deduct the copay amount from the inmate's commissary account or any other account or fund established by or for the benefit of the inmate while incarcerated. T.C.A. § 41-4-115(e).

Notwithstanding any other provision of law to the contrary, a plan established pursuant to T.C.A. § 41-4-115(d) may also authorize the jail administrator to seek reimbursement for expenses incurred in providing medical care, treatment, hospitalization or pharmacy services to an inmate incarcerated in the jail from an insurance company, healthcare corporation, TennCare or other source, if the inmate is covered by an insurance policy or TennCare or subscribes to a healthcare corporation or other source for those expenses. T.C.A. § 41-4-115(f). Note: An individual loses eligibility for TennCare upon becoming incarcerated. Accordingly, TennCare may properly deny coverage to an individual who is incarcerated. See Op. Tenn. Atty. Gen. 97-010 (February 4, 1997).

The United States Constitution, on its face, says nothing about medical care due inmates. The right to medical care was inferred by the United States Supreme Court in *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976) and the contours of that right have been shaped by subsequent case law. Constitutional principles derived from the Eighth Amendment's prohibition of "cruel and unusual punishments" establish the government's obligation to provide medical care for those whom it is punishing by incarceration. *Id.* See also *Helling v. McKinney*, 509 U.S. 25, 32, 113 S.Ct. 2475, 2480, 125 L.Ed.2d 22 (1993); *Marsh v. Butler County*, 268 F.3d 1014 (11th Cir. 2001).

"Although the Supreme Court has held that a state must provide inmates with basic medical care, the Court has not tackled the question whether that care must be provided free of charge." *Reynolds v. Wagner*, 128 F.3d 166, 174 (3d Cir. 1997), citing *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 245 n. 7, 103 S.Ct. 2979, 2984 n. 7, 77 L.Ed.2d 605 (1983) ("Nothing we say here affects any right a hospital or government entity may have to recover from a detainee the cost of medical services provided to him."). See also *Englehart v. Dasovick*, 12 F.3d 1102 (8th Cir. 1993) (Table) ("While the state has an obligation to provide medical care to prisoners, the Constitution does not dictate how the cost of that care is to be allocated.") (citations omitted).

There is no general constitutional right to free healthcare. *Reynolds*, 128 F.3d at 173. In *Reynolds*, the Third Circuit Court of Appeals affirmed a district court's ruling that there is nothing unconstitutional about a program that requires inmates with adequate resources to pay a small portion of their medical care. The court rejected the inmates' argument that charging inmates for medical care is *per se* unconstitutional. The court found that if a prisoner is able to pay for medical care, requiring such payment is not "deliberate indifference to serious medical needs." The court noted that "such a requirement simply represents an insistence that the prisoner bear a personal expense that he or she can meet and would be required to meet in the outside world." *Id.* at 174. See also *Roberson v. Bradshaw*, 198 F.3d 645 (8th Cir. 1999) (County's policy of requiring jail inmates to pay for their own medications if they could afford to do so did not violate the Eighth Amendment.).

If an inmate cannot pay, he must be maintained at the county's expense; it cannot deny minimal medical care to poor inmates. If an inmate can pay for his medical care, then the county may require reimbursement. No right described or alluded to in the Constitution is implicated by a decision of the county to seek compensation for its actual, reasonable costs in maintaining an inmate. As he was obliged to pay court costs, he may be obliged to pay his medical costs. Tennessee imprisoned him; it did not adopt him. See *Bihms v. Klevenhagen*, 928 F.Supp. 717, 718 (S.D. Tex. 1996). See also *White v. Correctional Medical Services Inc.*, 94 Fed.Appx. 262, 264 (6th Cir. 2004) ("It is constitutional to charge inmates a small fee for health care where indigent inmates are guaranteed service regardless of ability to pay."); *George v. Smith*, 2005 WL 1812890 (W.D. Wis. 2005).

In *Breakiron v. Neal*, 166 F.Supp.2d 1110, 1114-1115 (N.D. Tex. 2001), the district court found that deducting payments from an inmate's inmate commissary or trust account for medical services rendered

does not violate the Due Process Clause of the Fourteenth Amendment. The court noted that states may decide who should pay for the medical care of inmates. *Id.*, citing *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244-245, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983). Accord *Negron v. Gillespie*, 111 P.3d 556, 558-559 (Colo. App. 2005) (“As long as the state meets an inmate’s serious medical needs, each state may determine whether a governmental entity or an inmate must pay the cost of medical services provided to the inmate.”) (citing cases).

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