

# 2016: IOWA OFFICE OF OMBUDSMAN ANNUAL REPORT

## From the Ombudsman

Once again, it has been a busy year. Complaints were up 3 percent, with the largest increase in corrections-related complaints. In addition, the number of managed Medicaid complaints from both consumers and providers is now consuming the resources of more than one full-time staff person in my office. I anticipate an additional increase in the coming year in these areas, and in others if services are cut due to budget constraints.

Our increased case numbers are also part of the reason you are seeing a significantly scaled-down version of our annual report. First, I questioned whether the staff resources spent creating the annual report were worth the time it took away from handling complaints. Secondly, many of the summaries in our annual report are “old news” by the time our report is released. I believe sharing these summaries in a timelier manner on our website during the course of the year will be more beneficial to the public, legislators, and agencies. My goal is to make these improvements to our website in 2017. I am also hoping that necessary updates to our case management system will allow me to provide real-time statistics on our website in the future.

I am also honored and humbled that the Legislature recently voted to appoint me as the next Ombudsman. I assure you that I will work tirelessly to lead this great Iowa institution.



Kristie Hirschman  
Ombudsman

## FROM THE OMBUDSMAN'S CASE FILES

### Human Services

#### DID YOU KNOW?

#### You May Not Owe the \$25 Annual Fee to the Child Support Recovery Unit

Federal law requires the Child Support Recovery Unit (CSRU) deduct an annual fee of \$25 from a family's support payments. Starting with payments made in October, the fee is withheld after \$500 in support is sent to the family. **The fee is waived if the payee, along with any child on the case, has ever received cash assistance (such as FIP, TANF, ADC benefits) in Iowa or another state.** If you have more than one case, the fee may be deducted from each case. The person paying support gets credit for the full amount paid. If you have been charged an annual fee on your case but believe the fee should be waived, please contact your local CSRU office immediately.

#### Notices to Relatives When Children Are Removed From Parents

When a child is placed in the custody of the Department of Human Services (DHS), both federal and state law require DHS to notify the child's grandparents, aunts, uncles, adult siblings and parents of the child's siblings, half siblings, or adult caretakers suggested by the parents within 30 days. If you have not received the Notice to Relatives and have questions regarding accepting placement or providing support as a relative of a child, please contact DHS or our office.

#### Payment Delays for Service

Our office has been receiving and substantiating complaints from many Medicaid providers. Some have been from large providers, owed hundreds of thousands of dollars, who were initially able to absorb losses due to lack of or delay of payment. Others have been from small providers, owed thousands of dollars, who had difficulty meeting payroll and reported the possibility of closure.

The smallest providers are individual Consumer Directed Attendant Care (CDAC) providers. Lack or delay of payment to these providers means they cannot pay their bills. One CDAC provider said she might lose her home if she was not paid soon. These individuals provide care for people who are on Home and Community Based Waivers (Waiver). Waivers allow people to stay in their home rather than go to an institution. CDAC providers help disabled people with tasks like getting dressed and undressed, getting in and out of bed, scheduling appointments, housekeeping, and taking medicine.

One CDAC provider contacted our office in June 2016, two months after the Managed Care Organization (MCO) took over the task of processing payments for providers. The provider had two somewhat separate problems. First, he was still awaiting payment—from the state agency—for services provided in November and December 2015.

He also was having problems getting paid from the MCO for services provided after April 1, 2016. The MCO resolved the issues quickly once the case manager completed the prior authorization needed.

We also contacted the state agency regarding the lack of payments for services provided in November and December 2015.

The CDAC provider notified our office on July 29, 2016, that he had finally received payment for services he provided in November and December 2015. He was very grateful for our help, stating, “You did in a month what I couldn't do in six months.”

#### MCO Denies Payment of Birthing Services

A director of a small non-profit contacted our office because she was told that the Managed Care Organizations (MCOs) would not cover the home birthing services she provides. She told us that home birthing services had always been covered under Fee-for-Service Medicaid prior to the MCOs taking over.

The agency confirmed that home birthing services by a certified nurse mid-wife (CNM) were covered by Medicaid and that the MCOs should cover it. There is no specific Iowa Medicaid rule that addresses “home birthing services” rendered by CNMs, but a state administrative rule addresses this generally, stating: “Payment shall be approved for services rendered in any location in which the advanced registered nurse practitioner is legally authorized to provide services under state law. The nurse practitioner shall have promptly available the necessary equipment and personnel to handle emergencies.”

Agency staff advised the MCOs that the home birthing services must be covered. The MCOs then attempted to place limits or conditions on that coverage, but the agency told the MCOs that they could not do so.

We substantiated the complaint due to the initial refusal of the MCOs to cover home birthing services and their attempt to place limitations on it. The agency resolved the issue once our office brought it to their attention.

“You did in a month what I couldn't do in six months.”

### Corrections

#### Release Plan Delayed

An offender sought the Ombudsman's assistance when the deputy warden would not approve a release plan his counselor had completed for him.

As we began to look into the man's records, we wondered why his release plan had been sitting on the deputy warden's desk awaiting action for 42 days. When asked, the deputy warden said the man was not an early release candidate. She also said he was waiting for some jail credit that would shorten his sentence, after which they may request an early release with treatment on the street.

This explanation did not add up to us because if he could safely do treatment on the street, why not support that option now? Also, if they waited for the outcome of the jail credit before deciding to recommend release, he may very well discharge his sentence without treatment. Due to a several months long treatment waiting list inside the prison, completing

treatment while incarcerated did not seem to be possible. That led us to ask: *Is it your position that it is better for an inmate to discharge without treatment than support an early release recommending treatment in the community?*

We did not receive a direct response to that question, but as we continued to monitor this case, we noticed a release plan had been submitted—and before the inmate completed treatment and before his jail credits had come through. The inmate was approved for work release and directed to complete treatment on the street.

The Ombudsman told prison officials our hope is that early release recommendations are not withheld when the person can safely do treatment on the street prior to discharge, as was the case here.

#### Commissary Caper

*“This should have never gone to a grievance because it should have been resolved before that point.”* Those were the ending remarks by a warden regarding an inmate's complaint that his \$50 bag of commissary was stolen.

The inmate had gone to the commissary to retrieve his store order. To his dismay, the order had already been signed for. He reported this to the commissary officer, who agreed to review the video. The officer told the inmate that he would get a full refund because the video showed that he had not been to the commissary. (The officer was unable to identify the inmate who had wrongly taken the commissary items.) Four weeks later, however, the inmate had still not gotten his refund.

The inmate submitted a grievance, but it was denied because there was no evidence a staff member

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possessed the commissary items. While this was true, we reasoned that staff was supposed to oversee the inmate worker who handed out the commissary. In addition, inmates were supposed to show their ID before they signed for and received their order. These steps were obviously skipped.

Although the inmate could appeal the grievance denial, it was the holiday season and his funds were limited, so we contacted the warden with our observations.

The warden promptly handled the matter, stating the inmate would get a full refund.

When we relayed the good news to the inmate, he informed us it is now posted that inmates must show an ID to receive commissary.

### Court Order Ignored

**“NOT SUBJECT TO A MAXIMUM ACCUMULATION OF EARNED TIME.”** Not only was the judge’s language clear, the judge used all capital letters in this third attempt to have the agency properly apply earned time credits to an inmate’s resentencing order.

“Please intervene with the [the agency] and have them release me immediately per my sentencing order,” pled an offender who had been sentenced to a mandatory minimum as a juvenile but was resentenced in 2015 following a Supreme Court decision striking down mandatory minimum sentences as unconstitutional for juveniles.

The Ombudsman contacted the agency the day we received the copy of the judge’s Order because we believed the Order was clear. We asked agency officials to review the matter immediately.

Later the same day, the agency official told the Ombudsman the judge was issuing another Order as she did not intend for the inmate to be released.

The next day, the Ombudsman contacted the inmate’s attorney’s office to ask about the status of the Order. We were told the inmate was being released that day and the judge was not making any changes to the Order.

The agency official then told the Ombudsman that the judge had merely modified the Order and that the inmate would be released that day. We requested a copy of this modified Order. The official responded that he had misread the information, there was no change, and that the judge advised the agency her Order was clear. He said the inmate would be released that day as the judge ordered.

We told the agency official that the man’s complaint had been substantiated because there was no stand-alone evidence that the agency was acting on the sentence recalculation or release until we contacted them.

We also shared our hope that future court orders would be acted upon immediately and that those who played a role in this delayed release would be educated.

### Iowa Supreme Court Update

In November 2016, the Iowa Supreme Court ruled that juveniles who had been resentenced from mandatory minimum sentences should be given earned time credit at the faster accumulated rate. This was good news for about 150 inmates sentenced as juveniles for forcible felonies. This meant each person would not have to challenge the earned time rate through the courts.

We believe the Department of Corrections acted expeditiously on completing the recalculations following the November 2016 ruling. This would appear to explain why we received only three complaints related to that ruling, and we did not substantiate any of those complaints.

## Other Agencies

### Jail Violates Inmate’s Due-Process Rights

A jail inmate wrote that staff had punished him for breaking a rule without ever giving him a report.

We contacted jail officials and learned that the inmate had acted out violently when he was asked about a meal tray that had his name written on it. Staff sanctioned him to three days in lockdown status. But staff did not issue a disciplinary report or hold a hearing. We found that these failures violated not only the state’s administrative rules for jail disciplinary matters, but also the jail’s own written policies.

The Ombudsman sent a letter to the sheriff detailing our findings and conclusions. The letter included two recommendations: First, remind staff of the need to follow established due-process requirements; and second, amend the jail’s policy to include an inmate’s right to present evidence at the disciplinary hearing, as required by state rules. The sheriff accepted both recommendations.

### Wage Claim Mistake

A southeast Iowa woman filed a wage claim because she had not been paid by her employer. The agency initially refused to act on her request because it believed more than a year had elapsed since the wages became due and payable.

The woman told our office that the agency was incorrect, that it had been less than a year. She provided documentation, which we provided to the agency. The agency apologized and said there was an oversight by agency staff. Only part of the woman’s claim was beyond the one-year threshold.

The agency agreed to pursue the remaining wages. We had to contact the agency again several months later because the woman had not heard from the agency. At that point, the agency said the employer did not owe the woman as much as she thought, but the employer would pay what was owed.

### City Council Fails to Follow the Law

A city council refused to take appropriate action on a petition to change the city’s form of government that would allow citizens to elect a mayor. When the city’s eligible electors filed the petition, Iowa Code section 372.2 required that the city publish notice of a special election so citizens could vote on the matter. The law did not give the city council discretion to accept or reject the petition or refuse to set a special election date. However, the council did just that by voting not to adopt the petition by resolution.

Our office reviewed the petition, the council’s meeting minutes, Iowa law, and spoke with city officials. The city manager and city attorney did not dispute our interpretation of the law’s requirements. The only rationale provided for the council’s actions was ill-will from a long-standing dispute between city officials and the citizen who filed the petition. We found that the council failed to follow Iowa law and recommended the council consult the city attorney on how to proceed.

The city proposed adopting a resolution, on its own motion, which would change the form of government. However, this would cause at least an additional two-year delay as compared to taking action on the petition. In the end, the citizen decided he would file a second petition with the city. We notified the city of the citizen’s intent, our faith that the city would follow Iowa law the second time around, and our possible referral to prosecutors if the council failed to follow Iowa law the second time.

### Let’s Try This Again

An anonymous tipster alleged that local leaders flouted state law when they filled a vacant city council seat. The complainant claimed that council members had ignored public notification requirements and simply hand-picked a new council member. City council meeting minutes supplied by the complainant appeared to show that the council had acted improperly.

We contacted city leaders to find out more. Sure enough, city officials acknowledged that they had failed to follow a state law that says if council members opt to fill a vacancy by appointment, they have to publish notice of their intent at least 4 days, but not more than 20 days, before the appointment is scheduled to happen. The publication must also notify city residents of the right to request a special election by filing a petition.

In this case, council members appointed a new council member *the same night* they had accepted the departing council member’s resignation. It appeared to be an unintentional miscue, but was, nonetheless, a clear violation of the law. Therefore, our office concluded the new council member’s appointment was invalid.

We worked with city leaders and county elections officials to remedy the situation. We recommended that the council acknowledge its mistake in open session, rescind the appointment, and start over. Our recommendations were accepted, and city officials ultimately published public notice of the vacancy as required by law.

### Confusing Bill Leads to Sweeping Improvements

One man’s annoyance with a \$215 bill led us on an investigation that caused an Iowa city to retool its process for charging residents who let their lawns grow too long.

The man said he received a notice to pay the assessment without any prior warning. He disputed the city’s allegation that the grass at his rental property had grown taller than the nine inches allowed by ordinance. When he asked for proof, a city employee referred him to a supervisor, whose voice mail indicated he was out of the office for an extended period of time. Faced with no option of appeal, the man paid the bill under protest and continued without success to try to learn more about the city’s justifications for the bill.

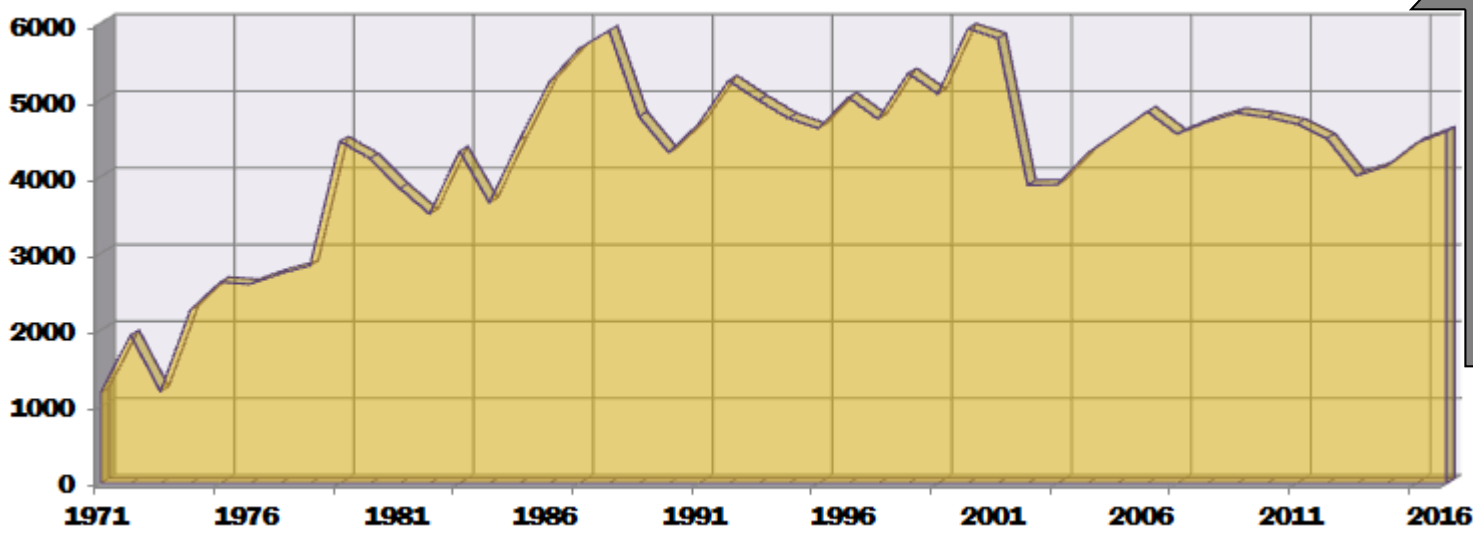
The resident eventually asked for our help. In reviewing his paperwork, we noticed that the city’s bill included almost no details. It did not state the date of his violation, nor did it explain how he could challenge it. Although the city had warned residents on its website and in newspapers that nonconforming lawns could be mowed without advance warning, the actual costs were not mentioned.

Photos that were taken by work crews but never offered to the resident showed that the length of his grass complied with the ordinance, except for a small strip of grass along the curb.

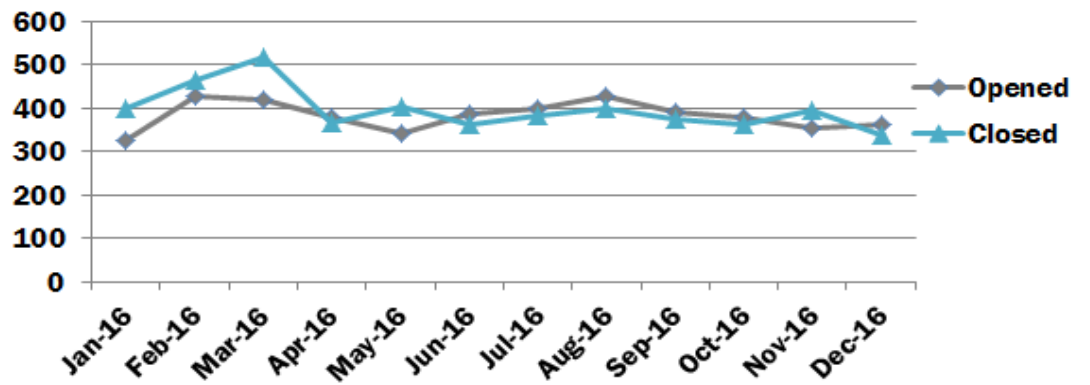
City officials could not explain how they arrived at the \$215 billed to our complainant. They eventually acknowledged that the city’s standard \$120 administrative fee per mow had been set informally and was never officially approved by the city council.

An attorney for the city agreed to refund all but \$50 of the man’s bill. More broadly, the attorney agreed that the city’s written guidelines and practices were confusing or lacking in detail. He promised that the city would make improvements. City notices now spell out the specific fees for overgrown lawns, and a city contact has been directed to answer all resident questions on bills. The city also revived a once-abandoned practice of providing a written warning by mail to noncompliant residents before mowing is ordered and billed to the resident. Residents who receive a bill will now be notified of their appeal rights.

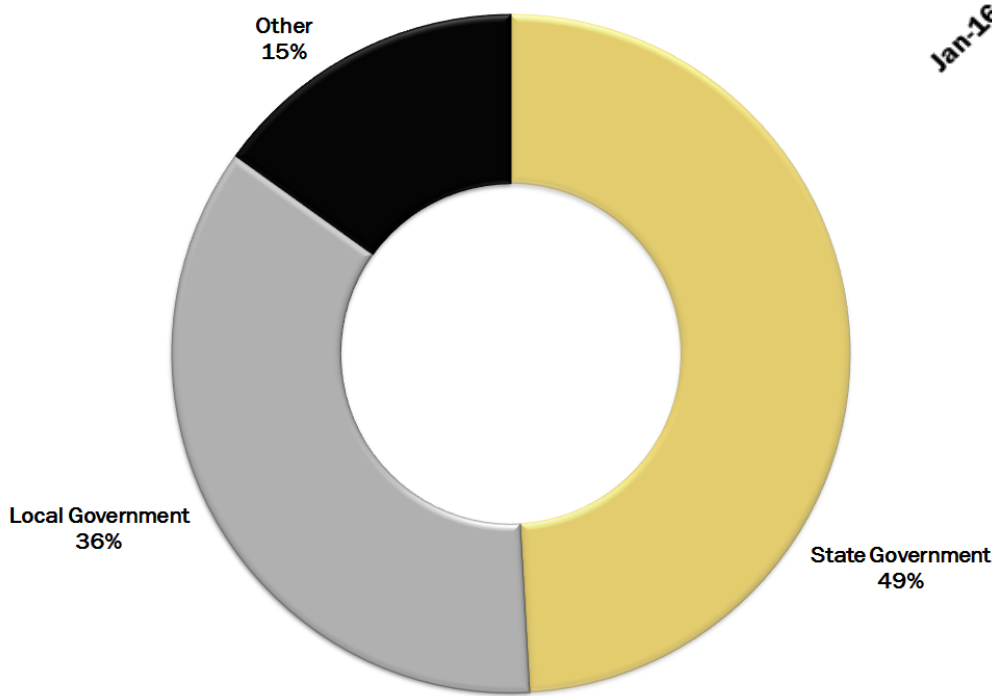
Number of Cases Opened in 2016



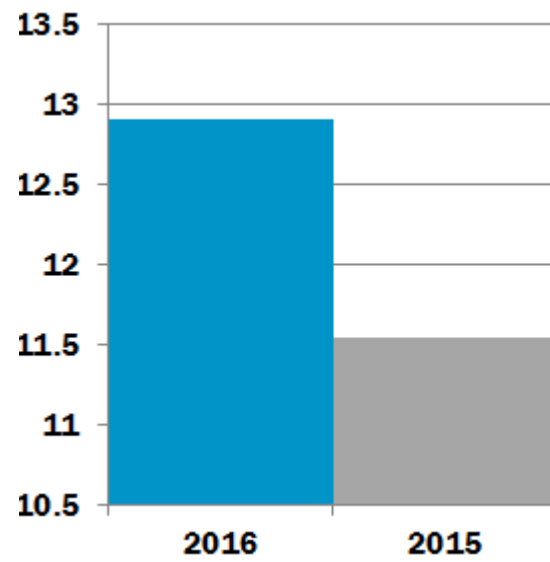
Number of Cases Opened and Closed



Subject of Complaints



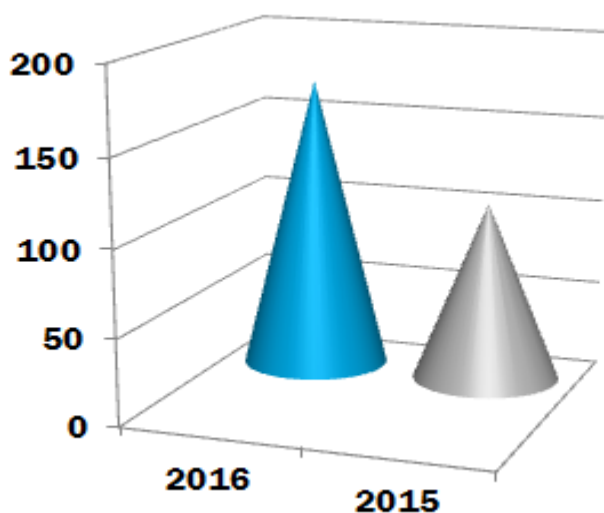
Percentage of Partially & Fully Substantiated Cases



In last year's annual report, the Ombudsman predicted the office would see an increase in contacts and complaints about managed Medicaid. She also predicted an increase in prison complaints due to the decrease in phone rates. Her predictions were accurate on both counts.

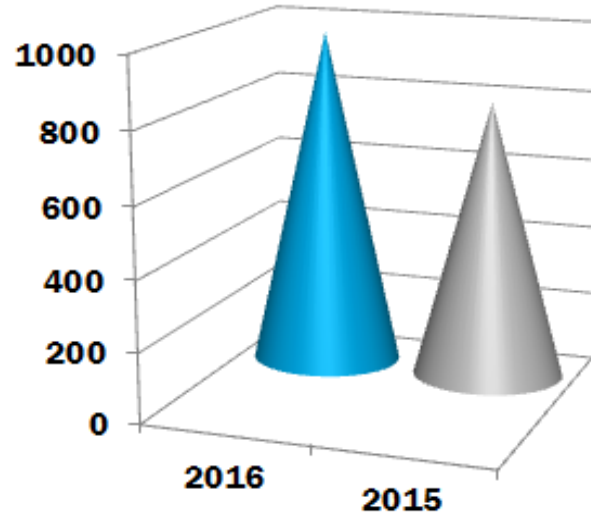
DHS Medical and Managed Care Organization Cases

63% Increase from 2015



Department of Corrections Cases

22% Increase from 2015



Cases Opened in 2016 by Agency

Name	Jurisdictional Complaints	Jurisdictional Information Requests	Non-jurisdictional Cases	Total	Percentage of Total
Administrative Services	5	0	0	5	0.11%
Aging	1	45	0	46	1.00%
Agriculture & Land Stewardship	3	1	0	4	0.09%
Attorney General/Department of Justice	5	9	0	14	0.31%
Auditor	1	3	0	4	0.09%
Blind	3	0	0	3	0.07%
Civil Rights Commission	5	3	0	8	0.17%
College Aid Commission	0	0	0	0	0.00%
Commerce	6	11	0	17	0.37%
Corrections	931	38	0	969	21.13%
County Soil & Water Conservation Districts	0	0	0	0	0.00%
Cultural Affairs	2	0	0	2	0.04%
Drug Control Policy	0	0	0	0	0.00%
Economic Development	0	0	0	0	0.00%
Education	7	3	0	10	0.22%
Educational Examiners Board	0	0	0	0	0.00%
Ethics and Campaign Disclosure Board	0	0	0	0	0.00%
Executive Council	0	0	0	0	0.00%
Human Rights	1	1	0	2	0.04%
Human Services	452	46	0	498	10.86%
Independent Professional Licensure	3	0	0	3	0.07%
Inspections & Appeals	37	10	0	47	1.02%
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	1	0	2	0.04%
Iowa Public Employees Retirement System	2	0	0	2	0.04%
Iowa Public Information Board	1	4	0	5	0.11%
Iowa Public Television	0	0	0	0	0.00%
Law Enforcement Academy	0	0	0	0	0.00%
Management	4	5	0	9	0.20%
Municipal Fire & Police Retirement System	0	0	0	0	0.00%
Natural Resources	4	0	0	4	0.09%
Office of Ombudsman	4	42	0	46	1.00%
Parole Board	27	5	0	32	0.70%
Professional Teachers Practice Commission	0	0	0	0	0.00%
Public Defense	2	2	0	4	0.09%
Public Employees Relations Board	0	0	0	0	0.00%
Public Health	9	6	0	15	0.33%
Public Safety	8	2	0	10	0.22%
Regents	12	2	0	14	0.31%
Revenue & Finance	25	7	0	32	0.70%
Secretary of State	3	2	0	5	0.11%
State Fair Authority	0	0	0	0	0.00%
State Government (General)	88	66	0	154	3.36%
Transportation	34	5	0	39	0.85%
Treasurer	3	0	0	3	0.07%
Veterans Affairs Commission	1	0	0	1	0.02%
Workforce Development	37	3	0	40	0.87%
<b>State government - non-jurisdictional</b>					
Governor		0	18	18	0.39%
Judiciary	0	0	133	133	2.90%
Legislature and Legislative Agencies	0	0	15	15	0.33%
Governmental Employee-Employer	0	0	18	18	0.39%
<b>Local government</b>					
City Government	516	38	0	554	12.08%
County Government	720	30	0	750	16.35%
Metropolitan/Regional Government	24	5	0	29	0.63%
Community Based Correctional Facilities/Programs	254	8	0	262	5.71%
Schools & School Districts	32	3	0	35	0.76%
<b>Special Projects</b>				34	0.74%
<b>Non-Jurisdictional</b>					
Non-Iowa Government	0	0	117	117	2.55%
Private	0	0	570	570	12.43%
<b>Totals</b>	<b>3275</b>	<b>406</b>	<b>871</b>	<b>4586</b>	<b>100.00%</b>

**Office of Ombudsman**  
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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 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.

This annual report about the exercise of the Office of Ombudsman functions during the 2016 calendar year is submitted to the Iowa General Assembly and the Governor pursuant to Iowa Code section 2C.18.

**“The Iowa Ombudsman and Assistants have saved the state *thousands and thousands* of dollars by resolving issues *without costly litigation*...The Ombudsman and Assistants are a *vital* resource for the citizens and families of the state of Iowa.”**

**— Satisfied complainant**

FY15 & FY 16 Financial Information

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

