

**-COUNTY OF MILWAUKEE-
INTEROFFICE COMMUNICATION**

DATE: January 22, 2019

TO: Supervisor Theodore Lipscomb Sr., Chair, County Board of Supervisors

FROM: Joseph Lamers, Director, Office of Performance, Strategy and Budget

SUBJECT: Inmate Medical Services Report Summary (Informational)

SUMMARY

Multiple reports and files regarding inmate medical services are being submitted to the County Board in January 2019. These reports are being presented to the Judiciary, Safety and General Services Committee on January 24 and to the Finance and Audit Committee on January 31, prior to a review by the full County Board on February 7th. Reports being provided include both informational and action items. The purpose of this report is to provide an overall summary of all the documents that are being presented.

In addition, a legal history is also provided in this report.

Reports presented to the Judiciary, Safety and General Services Committee are for Informational purposes. Action items are for action of the Finance and Audit Committee.

BACKGROUND

Pursuant to the Order of the Milwaukee County Circuit Court in the case of Christensen v. Milwaukee County et al., the County was required to enter into a contract with Armor Correctional Health Services, Inc. in 2013. This order was preceded by a history of legal issues in the County jail. As noted above, a more comprehensive legal history is included in the last section of this report (page 7).

The Armor contract to provide inmate medical, dental, and mental health services expired on December 31, 2018. A three-month contract extension with Armor to continue these services has been executed at a cost of \$5.7 million and began on January 1, 2019.

Milwaukee County must now determine whether to enter into an agreement starting April 1, 2019 with Wellpath for one, two, or five years (with renewal options), the vendor selected during the RFP process, for continuation of inmate medical, dental, and mental health services, while the County analyzes and plans for an insourced medical services model. In addition to consideration of contract options, this report addresses County

Board File 18-898 requested a report on insourcing inmate medical services for the Milwaukee County Jail (MCJ) and Milwaukee County House of Correction (HOC).

REPORT OVERVIEW AND SUMMARY

There are seven different items regarding inmate medical services being presented to the County Board in January. A summary follows each of these items. Additional details are included within the attached documents.

- 1. Operational & Preliminary Cost Analysis (Informational).** File 18-898 from the Committee on Finance and Audit requested a report on insourcing inmate medical services for the MCJ and HOC. An informational report, *Analysis of Insourcing Inmate Medical Services for the Milwaukee County Jail and House of Correction*, is attached. This report considers operational requirements and costs.

- a. Operational Analysis:** The Milwaukee County Department of Administrative Services has contracted with the NCCHC Resources, Inc. (NRI) to analyze the operational requirements to transition health care services for incarcerated persons in the county from a vendor-operated to a self-operated model. NRI has provided an outline of their work plan, which includes the steps and timeline for developing an operational analysis.

The inmate medical services RFP prepared in 2018 details all the services expected from a correctional health provider in order to have high quality care for inmates at the MCJ and HOC. The operational analysis will identify how the County will provide these services in-house and the County must also decide upon a model of care and organizational structure. This operational analysis, or Phase I of the insourcing project, is the first step in the development of an insourcing plan. This analysis will provide the County with insourcing options, and will assist the County in deciding what its model of care will be, as well as the organizational structure to provide the non-healthcare-related services necessary to operate a correctional health care practice. Additional details are included in the report on insourcing.

Dr. Brent Gibson, Chief Health Officer of NCCHC, will be present at both the Judiciary and Finance Committee meetings to answer questions.

- b. Preliminary Cost Analysis:** The Department of Administrative Services, with cooperation from other County departments, has prepared an initial draft analysis which estimates the cost of providing inmate medical services in-house at the MCJ and HOC. It is important to note that this

cost analysis has been drafted prior to the completion of the operational analysis being prepared by NRI. Given NRI's expertise in correctional medical and mental health services, it is almost certain that they will identify unforeseen expenses which are not included in this initial cost analysis. A revision to the analysis will need to be prepared after NRI completes their insourcing study.

Operational & Preliminary Cost Analysis – Attached documents:

- Insourcing Inmate Medical Services for the Milwaukee County Jail and House of Correction (Informational Report)
- Preliminary Cost Analysis Exhibit A
- NRI Analysis Plan Brief Outline Exhibit B

- 2. Legal Update (Informational).** A verbal informational report will be presented by the Office of Corporation Counsel on the status of the Consent Decree and status conference. This verbal report will be presented at the Judiciary, Safety and General Services Committee, as well as at the Finance and Audit Committee.

To the extent that the Resolution adopted by the Board in File No. 18-898 requested that the OCC compare legal risks under insourcing and outsourcing models, the OCC respectfully submits that at this juncture, no quantitative analysis can be conducted, but puts forward two general observations. First, legal risk appears to primarily derive from the ability to hire, train, and retain staff – both medical and correctional staff – necessary and appropriate to maximally reduce the likelihood of acute negative care-related events, as well as general inmate population trends, that are beyond the control of Milwaukee County's jail and HOC. Second, that risk can never be reduced to zero even if resources were increased well beyond levels that are practically possible, due to the fragility and critical care needs of inmate populations.

Legal Update – Attached documents

- None

- 3. Wellpath Contract, Option 1: 5-year term (Action Item – Finance Committee).** In 2018, an RFP was issued for a correctional medical services provider for a new contract for health care services in the Jail and HOC beginning in 2019. The RFP represented more than a year's effort by multiple agencies and experts in the field of correctional health care, and specifically focused on correcting identified areas of need or deficiency in the current operations (and in the current contract). In particular, the RFP and the resulting contract embed standards promulgated by the National Commission on Correctional Health Care ("NCCHC") throughout the scope and obligations of

each document, and further added a requirement of NCCHC accreditation within 18 months to the contractual relationship. An RFP Evaluation Committee recommended award of the RFP to Wellpath, LLC. A five-year contract agreement with Wellpath was proposed. In year one of the award, this contract would cost the County \$19,380,180.

Wellpath Contract, Option 1 – Attached Documents

- 2019 Correctional Medical Services Report
- 2019 Correctional Medical Services (Wellpath) Resolution (Option 1)
- 2019 Correctional Medical Services (Wellpath) Fiscal Note (Option 1)
- 2019 Correctional Medical Services (Wellpath) Contract

- 4. Wellpath Contract, Option 2: 2-year term (Action Item – Finance Committee).** Wellpath has provided alternative pricing models for shorter term contracts, if desired. If a five-year contract agreement with Wellpath is not the direction the County wishes to take, the County also has the option of entering into a two (2) year contract with eight (8) optional one (1) year renewals. This two-year option would cost the County \$19,573,982 for year one of the award. This amount is \$193,802 higher than the full annual cost for the five-year term.

Wellpath Contract, Option 2: 2-year term – Attached Documents

- 2019 Correctional Medical Services Report
- 2019 Correctional Medical Services (Wellpath) Resolution (Option 2)
- 2019 Correctional Medical Services (Wellpath) Fiscal Note (Option 2)

- 5. Wellpath Contract, Option 3: 1-year term (Action Item – Finance Committee).** Wellpath has provided alternative pricing models for shorter term contracts, if desired. If a five-year contract agreement with Wellpath is not the direction the County wishes to take, there is also an option of a one (1) year contract with nine (9) optional one (1) year renewals. The total contract cost for the one-year option will be \$20,170,784. This amount is \$790,604 higher than the full annual cost of the first year of the five-year contract, and \$596,802 higher than the annual cost of the two-year contract option.

Wellpath Contract, Option 3: 1 year term – Attached Documents

- 2019 Correctional Medical Services Report
- 2019 Correctional Medical Services (Wellpath) Resolution (Option 3)
- 2019 Correctional Medical Services (Wellpath) Fiscal Note (Option 3)

Summary of Wellpath Contracting Options

Year	Option 1: 5 Year Contract	Option 2: 2 Year Contract	Option 3: 1 Year Contract
1	19,380,180	19,573,982	20,170,784
2	19,961,580	20,161,201	20,360,817
3	20,560,428	20,766,037	20,971,642
4	21,177,252	21,389,018	21,600,791
5	21,812,568	22,030,689	22,248,815
Total	102,892,008	103,920,927	105,352,849

Grey shade reflects renewal years

- 6. Contract Monitor (Action Item – Finance Committee).** On September 21, 2018, the Department of Administrative Services - Procurement Division, the House of Correction and Milwaukee County Sheriff’s Office issued a Request for Proposals for a Contract Monitor to provide fiscal and clinical oversight of any current or future health services contract.

Through this RFP process, NRI was selected to begin providing contract monitoring services. The contract awarded is for a period of one year, with no more than four optional one-year renewals. The total cost of these services for one year is \$373,188. The cost is inclusive of the following:

- Lead contract monitor at 42 hours per month
- Medical contract monitor at 17 hours per month
- Fiscal contract monitor at 17 hours per month
- Transition support
- Back-office support
- Other expenses

A cost increase of approximately 10% will occur for each year of the contract.

Contract Monitor Contract – Attached Documents

- 2019 Correctional Medical Services Contract Monitor Report
- Contract Monitor (NRI) Fiscal Note
- Contract Monitor (NRI) Resolution
- Contract Monitor (NRI) Contract

- 7. Report on 2019 Anticipated Inmate Medical Expenditures (Action Item – Finance Committee).** The 2019 adopted budget does not include sufficient funding to cover the cost of the Wellpath contract award and other costs related to inmate medical services. A 2019 report has been submitted requesting to

cover all expenses related to providing inmate medical, dental and mental health services at the HOC and MCJ.

The report projects all inmate medical expenses for 2019 including the three-month Armor Extension, a pro-rated Wellpath contract amount for nine months, as well as costs that are not included in the Wellpath contract, which include the contracted in-sourcing study, the Contract Monitor contract amount, the pharmaceuticals cap, estimated pharmaceuticals overages and estimated specialty care overages. These combined items are projected to cost \$4,526,055 more than the \$17,606,017 which is budgeted in the House of Correction for fiscal year 2019. The report requests to move this amount from the Debt Service Reserve to cover these costs.

Inmate Medical Items	2019 Anticipated Expenditures	2019 Budget	Variance (Fund Transfer)
Armor 3 month extension	\$5,700,000	\$16,616,017	\$3,619,118
Prorated Wellpath Contract Amount	\$14,535,135		
NRI Insourcing study	\$99,999	\$0	\$99,999
Contract Monitor	\$373,188	\$140,000	\$233,188
Pharmaceuticals cap	\$750,000	\$750,000	\$0
Estimated Pharmaceuticals overages (25% County portion)	\$181,250	\$100,000	\$81,250
Estimated Specialty Care overages (50% County portion)	\$492,500	\$0	\$492,500
	\$22,132,072	\$17,606,017	\$4,526,055

The \$4,526,055 amount was determined based upon the 5-year contract term with Wellpath. If a different contract option is selected, this would change the amount estimated as needed and the report total will require a revision. A two-year option with Wellpath would require an additional \$145,352. A one-year option with Wellpath would require an additional \$592,953.

Contract Term	Total 2019 Transfer Needed	9 Month Prorated Wellpath Contract	Additional 2019 Funding Need
5 Year Option	4,526,055	14,535,135	-
2 Year Option	4,671,407	14,680,487	145,352
1 Year Option	5,119,008	15,128,088	592,953

Report on 2019 Anticipated Inmate Medical Expenditures – Attached Documents

- Report on Expenditures

- Resolution
- Fiscal Note

ADDITIONAL LEGAL HISTORY AND BACKGROUND INFORMATION

In 1996, Milton Christensen filed a *pro se* complaint alleging that conditions in the Milwaukee County Jail were unconstitutional. It grew into a class action, and the Legal Aid Society of Milwaukee and the ACLU of Wisconsin have represented class plaintiffs since that time. The class included all prisoners in the Jail, both then and in the future. According to plaintiffs, these conditions included, among other things, serious overcrowding, routine double-celling of inmates, a lack of personal safety and outbreaks of violence, the absence of proper inmate classification, and a substantial lack of access to medical, dental, and psychiatric staff and care.¹

On June 19, 2001, the Circuit Court approved a negotiated settlement agreement and consent decree (the "Consent Decree") initially resolving the litigation. The Consent Decree is a complex, forty-eight page document containing myriad provisions relating to population control measures and the medical, dental, and psychiatric care of inmates in

¹ The specific allegations from the 1996 complaint included:

- The jail, opened in 1993, designed to house 798 inmates, routinely housed well over 1,200 inmates, and at times, the population topped 1,400 inmates, resulting in unsafe, unsanitary, and otherwise inhumane conditions.
- Cells built to house 1 inmate frequently housed 2 inmates, with an inmate sleeping on a mattress on the floor. The toilets in the cells would sweat and other toilet spills and overflows occurred, which wet the mattress and bedding on the floor. Pregnant inmates and inmates with orthopedic issues slept on the floor.
- Bedding was not available for many inmates.
- Overcrowding increased the risk of transmission of infectious diseases among staff and prisoners and made the provision of adequate medical and mental health care very difficult, and seriously hampered the ability to maintain a safe environment.
- Prisoners and staff experienced high levels of mental stress due to these factors. One lockdown that occurred in response to a fight resulted in the entire inmate population being locked down for over one week.
- Because of the overcrowding, mandated segregation of differently classified inmates did not occur.
- Mental health care, dental care, and health care generally was deficient in terms of adequate numbers of appropriately trained personnel, as well as the classification, housing, and treatment of inmates. Some inmates were not provided access to psychiatrists, dentists, or physicians, or requested medication.
- Job training and educational opportunities provided to male inmates were not equally available to female inmates.

the Jail.² It operates in three parts: population limits,³ "substantial compliance" demonstrated by the absence of a need for court intervention, the number of days the jail is run at maximum capacity, and the use of other facilities to manage the population, as well as reporting and inspection obligations.

On September 13, 2004, the plaintiff class filed a motion seeking an order finding the County in contempt and in breach of the Consent Decree and asking for compensatory damages. On January 4, 2006, the Circuit Court issued a Decision and Order that concluded that Milwaukee County had acted in contempt by allowing 16,662 prisoners to remain in the Jail's booking area in excess of 30 hours, but refused to award any damages. Appeals followed, ultimately resulting in the Supreme Court upholding the trial court's determination.

In 2012, then Sheriff-Clarke requested the authority in his budget to enter into an outsourcing model to provide medical and mental health services in the jail. Sheriff Clarke

² At one time, consent decrees were perceived to be an efficient mechanism to address prison conditions, but that perception has changed. Legislators, prison officials, and taxpayers have come to bemoan micromanagement of jails by the courts, the burden on the taxpayers of seemingly never-ending lawsuits, and perpetual consent decrees that take on a life of their own. Indeed, in 1996 President Clinton signed into law the Prison Litigation Reform Act of 1995 (the "PLRA"), Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (1996) (codified in sections of 18 U.S.C., 28 U.S.C., & 42 U.S.C.). One of the stated reasons behind the passage of the PLRA was to curtail the micromanagement by the federal courts in running state and local jails:

[N]o longer will prison administration be turned over to Federal judges for the indefinite future for the slightest reason. Instead, the States [or the appropriate federal agency] will be able to run prisons as they see fit unless there is a constitutional violation, in which case a narrowly tailored order to correct the violation may be entered.

141 Cong. Rec. S14419 (daily ed. Sept. 27, 1995) (statement of Sen. Abraham). *See also* Barbara Belbot, *Report on the Prison Litigation Reform Act: What Have the Courts Decided so Far?*, The Prison Journal, September 2004. Congress found that the number of prisoner lawsuits "ha[d] grown astronomically – from 6,600 in 1975 to more than 39,000 in 1994." 141 Cong. Rec. S14408-01. In 1995, more than twenty-five percent of the suits filed in federal district court were brought by prisoners. *Roller v. Gunn*, 107 F.3d 227, 230 (4th Cir. 1997) (citing Administrative Office of the United States Courts, 1995 Federal Court Management Statistics 167). As a sponsor of PLRA stated, "[t]he legislation I am introducing today will return sanity and State control to our prison systems. It will do so by limiting judicial remedies in prison cases" 141 Cong. Rec. S14316 (daily ed. Sept. 26, 1995) (statement of Sen. Abraham). And in 1997, the Wisconsin Legislature enacted Wis. Stat. § 813.40 (1997 Wis. Act 133). The purpose was to provide a state parallel to the PLRA.

³ The population limits include that: (1) the County must maintain the total population of the Jail below 1,100 as measured at the daily 11:59 p.m. prisoner count (the total population cap was lowered to 960 effective May 14, 2007); (2) the County must use its "best efforts" to ensure that the population of the Booking/Open Waiting area of the Jail (the "BKOW") is less than 110 as of the 11:59 p.m. count; and (3) no prisoner may be held in the BKOW for longer than 30 hours (the "30-Hour Rule"). Nothing in national standards, state statutes, or state administrative regulations independently sets a standard comparable to the 30-Hour Rule.

sought an order from the Court declaring that he had unilateral authority to enter into a contract to provide health care to inmates and detainees in his custody and charge. Sheriff Clarke sought authority to enter into a contract with Armor Correctional Health Services, Inc. The County Board did not approve the proposed contract during the budget process because of Dr. Shansky's objections to provisions of the contract. Consensus could not be reached with other elected officials or the Plaintiffs. On December 4, 2012, the Court denied Sheriff Clarke's motion seeking a declaration that he had unilateral authority to contract for medical services to inmates and detainees in his custody and charge. The Court also ordered that the parties attempt to resolve their differences and fill the then-vacant medical director, program administrator and chief psychiatrist positions required by the Consent Decree. After attempts to fill the vacant leadership positions failed, Sheriff Clarke filed a motion seeking an order that Milwaukee County enter into a proposed contract with Armor to provide medical, mental health and dental services to inmates at the Milwaukee County Jail and House of Correction. Thereafter, the part-time physician overseeing the nurse practitioners and the only physician authorized to dispense controlled substances tendered his resignations, making the delivery of adequate medical care to a significant number of inmates impossible. As a result, on May 21, 2013, the Court overseeing the Consent Decree entered an order mandating that the County contract with Armor because it ascertained that there was no current alternative to Armor. That 2013 Order remains in place to date.

Since the entry of the Consent Decree the County has successfully demonstrated appropriate population management and substantial compliance, and has undertaken great strides in correcting the problems originally alleged by plaintiffs and creating a first-class jail. In particular, since September of 2017, the County has also implemented substantial improvements under the direction of then-Sheriff Schmidt. The medical monitor under the Consent Decree, Dr. Shansky, was particularly complimentary of the decision to appoint four Wellness Captains to oversee the wellness of the inmate population. Additionally, the Sheriff's Office has revamped the inmate grievance program, replaced the inmate tracking software, changed its training process for correctional officers, and implemented several recommendations made by the National Institute of Corrections.

Then Acting Sheriff Schmidt requested that the National Institute of Corrections (NIC) inspect the jail and performed an operational assessment of the facility in February and March of 2018. They found no major violations of their standards. They made 17 recommendations for improvement of which 15 recommendations were implemented prior to the final report being published in March of 2018. The two remaining recommendations are long term projects and include a complete update of policies and a completion of an updated staffing analysis. These projects are underway.

Based upon these significant improvements and overall compliance with the Decree, the County will now again attempt to work with the Court and Plaintiffs to establish a pathway, in partnership with Wellpath, to bring the Consent Decree to a close. (Please also see a letter to the Court, filed by the Office of Corporation Counsel and Husch Blackwell on January 23, 2019, submitted and attached to File No. 19-14.)

CONCLUSION

This report is provided for informational purposes. The report summarizes documents that are being distributed to the County Board in January 2019 pertaining to inmate medical services.



Joseph Lamers, Director
Office of Performance, Strategy and Budget
Department of Administrative Services

cc: Chris Abele, Milwaukee County Executive
James "Luigi" Schmitt, Chair, Finance and Audit Committee
Anthony Staskunas, Chair, Judiciary, Safety and General Services Committee
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Milwaukee County Sheriff Earnell Lucas
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