

**MILWAUKEE COUNTY
INTEROFFICE COMMUNICATION**

DATE: April 26, 2022

TO: Maria Perez, Chairwoman, Milwaukee County Mental Health Board

FROM: Mary Jo Meyers, County Executive Chief of Staff
Joe Lamers, Director, Office of Strategy, Budget and Performance (SBP)

SUBJECT: Administration's Response to Proposed Across-the-Board Pay Increases at BHD

I. BACKGROUND¹

At the Mental Health Board's (MHB) last quarterly meeting on February 24, 2022, Joseph Lamers (Director, Office of Strategy, Budget and Performance) and Dean Legler (Compensation Director) presented an information report regarding the 2023 budget planning process, as well as updates pertaining to annual general salary increases or cost-of-living adjustments (COLAs) and other pay increases for Milwaukee County Behavioral Health Division (BHD or BHS) employees.

Mr. Lamers explained that in 2015, a pay range system was implemented for BHD employees, whereby employees at or above the top of their pay range would not receive COLAs unless the job was moved to a higher pay range. The pay range system includes notable differences from the step system which was previously used, including a larger pay range at the top and bottom of the pay scale. Thus, from 2015-2021, BHD employees who had reached maximum compensation for their pay range should not have received a COLA. Pay increases for employees at the top of a range should only occur if the position is moved to a higher pay grade based upon market review.

Regardless, Mr. Lamers confirmed that all general BHD employees, regardless of whether their compensation is at or above the maximum for the range, will receive a 2% pay increase as of April 3, 2022.

Discussion followed that addressed whether any legal risk is created because the County Board had approved annual COLAs for all other nonunion County employees during the same period, regardless of whether the employee was at or above the top of their pay grade. Importantly, the compensation system at BHD is not analogous to the compensation system for the rest of the County (*see infra* p.5-6).

II. ACTION TAKEN ON FEBRUARY 24, 2022

After the informational report and discussion had concluded on February 24, based on equity and fairness concerns, the informational item was turned into an action item. Specifically, the MHB approved pay increases for employees at or above the maximum of a pay grade and directed that

¹ Note: this discussion does not pertain to employees whose compensation is governed by a collective bargaining agreement.

pay adjustments not applied to such employees not only be applied going forward, but that COLA increases be applied retroactively to 2015.²

Importantly, this action item was not on the February 24, 2022 agenda, nor was any cost or risk analysis available to the MHB members related to this action. The administration prepared this report to provide cost and other risk analyses for the MHB.

III. DEVELOPMENTS SINCE FEBRUARY 24, 2022

In response to requests from MHB Chairwoman Maria Perez, meetings were held among Chairwoman Perez, Board member Thomas Lutzow and numerous County leaders including Director Lamers, Human Resources (HR) Director Franklin, Retirement Plan Services (RPS) Director Bronikowski, Corporation Counsel Daun, and Chief of Staff Meyers.

These discussions addressed numerous questions, summarized in brief below:

- A. Is there any legal risk to MHB, BHD, or the County because employees at the top of the pay range at BHD did not receive COLAs from 2015-2021, while other nonunion County employees did?

Answer from the Office of Corporation Counsel (OCC): No. Of course, anyone can sue for anything, but such a claim has no legal merit.

- B. Is there any legal risk to MHB, BHD, or the County because some BHD employees received COLAs from 2015-2021, while others did not?

Answer from OCC: No. Of course, anyone can sue for anything, but such a claim has no legal merit.

- C. Can retroactive salary or wage increases be implemented?

² The language of the motion is as follows:

By the authority granted to the Milwaukee County Mental Health Board under ACT 203 (Chapter 51.41), the Milwaukee County Department of Human Resources, Compensation Division, is hereby directed to adjust the Behavioral Health Services' (BHS) pay range minimum and maximum pay steps dating back to 2015; retroactively compensate all cost of living adjustments (COLAs) dating back to 2015 including interest, and adjust pension calculations accordingly using funds set forth in BHS's Budget surplus, which were previously specifically designated for this purpose to make all affected employees, past and present, whole. All future COLAs implemented County-wide from this day forth will include all BHS employees. A supporting report is to be provided to this Body at the April meeting.

Answer from Budget, HR and RPS: Yes, as a practical matter, but doing so is very risky.

D. What risks are created by retroactive salary increases?

Answer from OCC, HR, Budget: Numerous and serious practical and legal risks result from retroactive salary increases. As a general matter, the County has only implemented retroactive raises when required to under collective bargaining agreements or other contracts (and even in those situations, the retroactive increases in the recent past never covered multiple years). Retroactive salary adjustments are not a compensation best practice in either the public or private sectors for many reasons, including:

1. difficulty in locating former employees;
 2. inappropriate incentives, morale impacts, and perceptions of unfairness if compensation increases are implemented for former employees;
 3. the extreme complexity associated with implementing retroactive of pay adjustments, which will require manual review and calculation of every adjustment for every employee, for each year, and related accuracy concerns,
 4. the extreme complexity associated with implementing the related benefit adjustments, particularly related to deferred compensation and pension benefits, exacerbated by the highly unusual number of pension benefit calculations in Milwaukee County, which will require manual review and calculation of every adjustment for every employee, for each year, and related accuracy concerns;
 5. the extraordinary staff time required versus other options,
 6. the litigation risk if any errors occur, especially as to benefits, which would create outsized legal and other additional costs; and
 7. risk of establishing a suboptimal and non-best practice precedent.
- E. Are there alternatives to retroactive raises that could address recruitment, retention, and equity/fairness considerations, without the above-noted risks?

Answer from OCC, HR, Budget: Yes. First, and as adopted by the MHB on February 24, 2022, the 2% COLA for 2022 will apply to all BHD employees, even if an employee is at or above the pay range. Second, a forward-looking market analysis should be considered, with related implementation of grade increases where appropriate. Third, a one-time lump sum bonus for current employees who did not receive COLAs from 2015-2021, based upon factors to be identified by HR and presented to the MHB as soon as practicable, is another option which may be considered.

IV. PRELIMINARY COST ESTIMATE

Initial and preliminary cost estimates have been prepared by the Comptroller's Office for years 2016 to 2020, assessing the potential impact of the motion approved by the MHB. Based on preliminary analysis, it is expected that the approved motion would result in approximately **\$1.0 million** in retroactive pay adjustments, with an additional annual cost to maintain the increases

equal to approximately **\$300,000 each year**. Approximately 50 employees would be impacted as of year 2021.

This estimate is subject to the following qualifications and disclaimers:

- Calculation of the approved motion is complex and requires a highly technical review. Pay actions for individual positions need to be reviewed manually for each employee and for each year, dating back to 2015, as noted above.
- These are only estimates and include certain assumptions that would need to be refined and calculated in detail prior to implementation. For example, the Comptroller assumed that prior year salary increases were implemented at mid-year, although the implementation date varies from year to year.
- These estimates do not account for inflation.
- Importantly, these estimates do not include pension cost impacts, which could be significant.
- Ongoing cost impacts may be reduced going forward due to the transition to the Mental Health Emergency Center.

V. COUNTY EXECUTIVE'S APPROACH TO COMPENSATION EQUITY

One of the County Executive's top priorities is establishing pay equity Countywide, for all the County's nearly 4,000 employees, including those at BHD. His commitment to fair and equitable compensation was reflected in his 2022 Recommended Budget, which included commitments to increase compensation by approximately \$13.0 million or a 6.5% year-over-year increase. Specifically, the 2022 adopted budget included:

- a 2% across-the-board increase for general employees,
- \$5.0 million in funds for pay equity adjustments to be implemented at mid-year 2022, and
- \$4.0 million in pay increases for Correction Officers, a particularly challenging position to fill.

To achieve this milestone and fulfill his promises regarding pay equity, material budgetary sacrifices were required. The Executive's efforts to provide significant compensation equity adjustments in 2023 and future budgets will continue.

So, while equitable compensation is a top priority for the Executive and while he agrees with the Mental Health Board that steps should be taken to address the Board's concern over the approximately 50 employees who did not receive COLAs because they were already receiving maximum compensation for their range, he does not support retroactive salary adjustments at BHD, given the overall budgetary needs of Milwaukee County, as well as numerous other approaches that are far less risky and more impactful.

Below please find more detail regarding the considerable risks posed by retroactive salary adjustments noted above:

- A. In an extremely challenging labor market exacerbated by COVID-19, the Great Resignation, and labor market shortages (and corresponding higher salaries) in the private sector, the County already faces significant compensation equity issues amongst existing employees. Several large County departments are operating with vacancy levels of approximately 20%, which presents challenges performing core County functions and state mandates. Any funds dedicated towards compensation should be directed towards existing employees. The Executive will not support any version of increased back pay or bonuses for employees who have left the County.
- B. The approved motion includes a highly complex, technical, and manual review of individual staff salaries and benefits, dating back to 2015. Errors pertaining to payroll and benefits will occur, presenting risk for the County.
- C. The pay grade system that provides flexibility to address pay inequities, unlike the compensation system that applies to all other nonunion County employees. Specifically, the pay ranges applicable to BHD are much larger and implemented with more consistency than the County's step grades. At BHD, the pay range spread between the top and bottom of a range equals approximately 40% for administrative positions, 45% for professional-type positions, 50% for managerial positions, and 55% for executive-type positions. This provides sufficient room for compensation increase for high performing employees, as well as for greater consistency between jobs with similar responsibilities.

VI. CONCLUSION and NEXT STEPS

The County Executive is committed to working with the Mental Health Board to reach a cooperative solution to the Board's equity and other compensation concerns.

To that end, the Executive already agreed to the first alternative option noted above (i.e., 2% increase for all general BHD employees in 2022, including those already at the top of their pay range).

The County Executive is also willing to work with the MHB to consider alternatives 2 and 3 listed above (market study to adjust ranges and potential one-time lump sum bonuses for those who are still employed at BHD).

Indeed, the Executive has already directed HR to conduct comprehensive compensation studies and he is willing to include BHD in those analyses, including an evaluation of positions with employees already receiving maximum pay. To the extent that the compensation studies identify positions paid below market, and as funds are available in the budget, targeted efforts will be made to provide pay equity adjustments in these circumstances.

That said, the County Executive will not implement retroactive raises due to the outsized risks, inefficiencies, and the tactic's overall ineffectiveness in addressing equity concerns, as well as its

ineffectiveness in retaining and attracting employees, when other more effective options are available and pose much less risk.

Should the MHB wish to cooperatively address equity through any of the above noted alternatives, the County Executive, his cabinet directors, and staff will be happy to engage and report back to the MHB.
