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Date: August 18, 2014

To: Honorable Members of the  
Committee on Health and Human Needs

cc: All other Supervisors  
Committee Clerk Janelle Jensen  
Steven Cady  
Patricia Schroeder  
Kathy Eilers  
Kelly Bablitch  
Eric Peterson

From: Paul Bargren *PB*  
Corporation Counsel

Re: Committee Referral re File No. 14-467

At the Committee's meeting of June 18, 2014, I reviewed my Initial Report of May 16, 2014, File No. 14-467, regarding the new Mental Health Board (MHB) structure that resulted from passage of Act 203 effective April 10, 2014. As noted in the Committee Clerk's memo to me of June 19, 2014, Sup. Mayo requested that I provide Committee members with a written response to the following questions. The Committee did not hold a regular meeting in July cycle, so I am providing this response now.

**1. Provide further information on what Behavioral Health Division (BHD) employees' recourse options are for labor disputes to ensure that they have and keep the same rights as all other County employees including both represented and non-represented.**

BHD employees have the same statutory civil service rights under Ch. 63 and Ch. 66, Stats., as all other county employees. BHD employees also have the same statutory rights as all other county employees to form or join unions and bargain on topics as allowed by 2013 Act 10. Act 203 expressly gives jurisdiction over budget units 6300 and 8700 to MHB. *See, e.g.*, § 51.41(1s)(d), Stats., and Act 203 § 53(3)(non-statutory provisions). Act 203 also deprives the County Board of jurisdiction over those units. *See, e.g.*, § 59.53(25). As a result, employees in those units are not covered by County Board "status quo" or Personnel Review Board ordinances found in MCO Ch. 17 and 32. Stated a bit differently, the County Board has no jurisdiction by which to enforce provisions such as the status quo or PRB ordinances over mental health

employees. MHB and BHD administration are developing their own grievance process and personnel procedures that comply with civil service statutes.

**2. Will taxpayers be on the hook for the bill if BHD finds itself in a deficit situation?**

There is no provision in the statute for MHB to run a deficit in its annual budget. MHB could seek additional funds from an outside source, including asking the County Board to transfer funds from the county's general fund. But if MHB cannot locate additional funds, it is required to live within its budgeted levy.

**3. Considering the County Board's imposed obligation to approve the Mental Health Board's (MHB) BHD budget, will the [County] Board get an opportunity to review the BHD budget, or will it just be reflected as a line item in the overall budget? If it is found that the [County] Board does not get to review BHD's budget prior to passage, as the Board's representati[ve], does Corporation Counsel intend to challenge that aspect of the Act?**

The County Board does not approve the MHB budget. Under § 51.41(4)(b), Stats., MHB develops and proposes to the Executive "the total amount of the mental health budget," including the community aids amount and the tax levy amount. The Executive includes a tax levy amount for MHB in his proposed budget for Milwaukee County. § 51.41(4)(b)2. The County Board then "shall incorporate into the budget for Milwaukee County" the "tax levy amount as proposed by the county executive," the community aids allocation allocated by the Board under § 51.41(4)(b)3 and the balance of the total mental health budget amount proposed to the Executive by MHB. § 51.41(4)(b)4. Thus the amount of budget detail available to the County Board is at the discretion of the Mental Health Board and the County Executive. However it would appear prudent for MHB and the Executive to provide information about the MHB budget to the County Board just as they would provide information about the MHB budget to any interested constituency.

Should MHB for some reason fail or refuse to provide a copy of its budget document to the County Board, the County Board could make a request under the Public Records law. Whether there is a legal means to "challenge ... the Act" quickly enough to obtain information for the County Board during the budget cycle seems doubtful. Also, legal action of that sort would need to be authorized by the County Board, *see* MCO 1.11(c)(3)2(b), not simply started by this Office. A better path, in my view, would be to request or demand the information directly from MHB, under the Public Records law or otherwise.

**4. Will MHB have to adhere to the County's Disadvantaged Business Enterprise requirements?**

Whether mental health contracts will adhere to the County's DBE requirements will be up to MHB. The County Board has no mechanism to enforce the DBE requirements of Ch. 42 in mental health contracts.

The DBE program adopted by the County Board in Ch. 42 of the Milwaukee County General Ordinances (MCO) is enforced through provisions in county contracts. However, the County Board is specifically barred from considering or acting upon mental health contracts. "The county board of supervisors may not exercise approval or disapproval power over any contract

relating to mental health or mental health institutions, programs, or services.” § 46.21(2)(j), Stats. The County Board may not take any mental health-related actions under the general contract review provisions of § 59.52(31) or the intergovernmental agreements provisions of § 66.0301. *See* § 59.53(25), Stats. Rather, mental health contracts are subject to MHB review and approval. § 51.41(10), Stats. Any DBE requirements in mental health contracts will need to be imposed by MHB.