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January 23, 2019

Hon. Marshall B. Murray
Milwaukee County Circuit Court
Milwaukee County Courthouse
901 North Ninth Street
Milwaukee, WI 53233

**Re: Milton Christensen, et al. v. Michael J. Sullivan, et al.
Case No. 96-CV-1835**

Dear Judge Murray:

Please allow this correspondence to serve as a status report in advance of the status conference scheduled for 2:00 p.m. on January 31, 2019. We write on behalf of Milwaukee County (the “County”) to inform the Court of developments since the October 24, 2018 Status Conference related to the provision of medical care at the Milwaukee County Jail and House of Correction, to set forth the County’s recent collective efforts and plans to achieve substantial compliance with the Consent Decree, and to make certain requests of the Court in connection with the foregoing. First, we address the current contractual relationship with Armor Correctional Health Services, Inc. (“Armor”), as well as the County’s efforts to conduct a competitive and objective bidding process for a (potentially new) vendor to provide those services going forward, and the County Board’s directive to explore insourcing as an option. Second, we discuss the insourcing analysis process in greater detail. Third, we discuss the County’s proposed approach to the Consent Decree going forward. Finally, we present the County’s current requests to the Court.

I. Developments Regarding Armor and the County’s RFP for Medical Services

A. Armor Contract

As the Court is aware, on July 20, 2018, the County issued a public Request for Proposals, No. 98180023, for correctional medical services at the Jail and House of Correction (the “RFP”). Responses were due by September 7, 2018. On September 7, five responsive proposals were received. However, the evaluation process, originally slated to conclude by October 5, took much longer than expected. Milwaukee County ultimately issued a Notice of Intent to Award and to

enter into a contract with Wellpath LLC (f/k/a Correct Care Solutions, LLC) (“Wellpath”) on December 19, 2018 (see “**Attachment 1**” enclosed herewith).

Prior to that announcement, as the RFP evaluation process looked certain to continue well into November, the expiration of the contract between the County and Armor on December 31, 2018, quickly approached. Based upon this looming deadline, uncertainty as to when the RFP awardee would be announced, the length of time needed to negotiate a finalized agreement with the awardee, the additional time needed to safely plan and execute a potential transition from Armor to a new vendor, as well as this Court’s Order of May 21, 2013 (“Order”) (see “**Attachment 2**” enclosed herewith) requiring the County to contract with Armor (which would separately necessitate motion practice and/or a hearing for this Court to consider amending the Order if a new vendor were selected), it became clear that medical services could not be transferred from Armor to a new awardee, if one was selected, until well into 2019.

Therefore, the County initiated negotiations with Armor for a short-term extension of Armor’s contract. On December 3, 2018, the County entered into a Second Amendment¹ to the Health Services Agreement with Armor, extending the term of the agreement from December 31, 2018 until March 31, 2019 (see “**Attachment 3**” enclosed herewith, which includes the original Armor contract; see also “**Attachment 4**,” which is the First Amendment).

¹ The Second Amendment did not require approval by the County Board because (a) the agreement was for a term of less than one year; (b) the amount of the contract amendment was within the 2019 budgetary authority of the department responsible for oversight of this Second Amendment; and (c) under the Order, the County was compelled to contract with Armor. A new contract will require County Board approval because (a) the contract is certain to run more than 9 months, thereby impacting budgetary allocations in a future fiscal year; and/or (b) the contract value may exceed the budgetary authority of the department for oversight of the new contract (the House of Correction). For more on this complex subject, please see analyses prepared by the Office of Corporation Counsel dated March 2017, attached to legislative File Nos. 17-274 and 17-275, available via the County’s Legislative Information Center (“CLIC”) at <https://milwaukeecounty.legistar.com/Calendar.aspx>.

Updates regarding the RFP process were provided to the Board by the administration through reports submitted and heard in October, November, and December as attached to File Nos. 18-788 and 18-898, available through CLIC, at <https://milwaukeecounty.legistar.com/Calendar.aspx>. *Sisson v. Hansen Storage Co.*, 2008 WI App. 111, ¶11, 313 Wis. 2d 411, 424-425, 756 N.W.2d 667, 674 (court may take judicial notice when: (1) the fact for which judicial notice is requested is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and (2) a party asks the court to take judicial notice and gives the court the necessary information). The need for an extension of the Armor contract was first discussed in a report dated November 16, 2018, attached to File No. 18-898 (and formally presented to the Judiciary Committee of the County Board on November 25, 2018) and the final, executed Second Amendment was discussed in a report dated December 4, 2018, attached to File 18-898 (and formally presented before the Finance Committee on December 6, 2018). Both reports were therefore part of File 18-898 and before the entire County Board on December 13, 2018 when the County Board adopted a resolution directing the Administration to explore an insourcing option, as discussed further below in Section I.C. On an ongoing basis, File No. 19-14 has been created so that the Administration can provide continuing updates to the Board.

This short-term extension was indisputably necessary and ensures that the County both (a) continues to provide medical and mental health care services at the Jail and House of Correction until responsibility for those services can be safely transitioned to Wellpath; and (b) remains in compliance with the Order.

Wellpath will be in position to provide medical and mental healthcare at the Jail and House of Correction beginning on April 1, 2019.

B. Planned Transition to Wellpath

After issuing the Notice of Intent to Award, the County began contract negotiations with Wellpath. As of the date of this submission, the County has substantially completed those negotiations, and a proposed finalized version of the contract shall be presented to the Committee on Finance and Audit of the Milwaukee County Board (“Finance Committee”) on January 31, 2019. The proposed finalized contract is available via the County’s Legislative Information Center (“CLIC”) under File No. [TBD], available at <https://milwaukeecounty.legistar.com/Calendar.aspx>.

If the Wellpath contract is recommended by the Finance Committee for approval on January 31, 2019,² it would be heard by the County Board on February 7, 2019. If tabled by the Finance Committee, the contract could be heard again by the Finance Committee in the next legislative cycle, which would culminate in a vote by the full County Board’s on March 21, 2019, a handful of days before the proposed formal transfer of medical services from Armor to Wellpath under the Administration’s current recommendation.

If the contract is rejected by the Finance Committee, the County Board could take up the contract under certain legislative rules on March 21, 2019.

Regardless, unless the Board approves a contract with Wellpath prior to the expiration of the contract with Armor on March 31, 2019,³ the County may need to seek emergency guidance from this Court as to how to proceed as there are no other currently feasible options for the provision of medical services.

² The Finance Committee begins at 9:00 a.m. on January 31, 2019. The status conference before this Court commences at 2:00 p.m. that same day. Depending upon the order of the Finance Committee’s agenda and the length of the discussion on this item, counsel may be able to inform this Court regarding the Finance Committee’s action on the proposed Wellpath contract during the status conference.

³ Practically speaking, it is necessary that Wellpath, Armor, and the County cooperatively undertake logistical preparations as soon as practicable, most importantly to address the staffing needs of Wellpath and the anticipated transfer of many health care professionals from Armor’s payroll to Wellpath’s.

C. Wellpath Contract and Contract Monitoring

1. Wellpath Contract

Based upon the County's experience with Armor, as well as the County's experiences with this case, this Consent Decree, this Court, Dr. Shansky, and Plaintiffs, the County sought to craft an RFP and to negotiate a new contract that ensures substantially improved medical services in the Jail and House of Correction. In addition, during the contract negotiation process, the County sought and obtained feedback from Plaintiffs' counsel regarding the new contract with Wellpath. Each of their concerns/comments have been addressed and incorporated into the draft proposed Wellpath contract.

The contract represents more than 1,500 pages of specific obligations, detailed patient care requirements, staffing requirements, accreditation requirements and other standards.

To aid this Court's review, please find below a summary listing of the substantial improvements (with section citations) made to the Wellpath contract⁴ based upon the County's experiences with Armor and in this case, as well as input from Plaintiffs' counsel.

- Compliance with the National Commission on Correctional Health Care ("NCCHC")⁵ Standards for Health Services in Jails (the "NCCHC Standards") is an integral part of the contract (Wellpath contract section 1.0.1). The NCCHC Standards are now the primary basis for care, and accreditation is a result of improved standards, rather than a minimum bar to be met;
- Identification of specific timeframes and high-priority items (such as health assessments, sick call, priorities of care, refusal documentation, etc.) in the contract terms (e.g., Wellpath contract sections 1.1.1, 1.1.3, 1.1.4 and 1.1.6);
- Accreditation requirements:
 - Wellpath must obtain NCCHC accreditation within 18 months of entry to the facility, or face fines and penalties. (RFP Section 15.1)

⁴ The contract incorporates by reference these documents, and establishes an order of precedence as follows: the Christensen Consent Decree; the RFP and all RFP documents; Wellpath's Health Care Staffing Plan/Matrix; Wellpath's Proposal in response to the County's RFP; and Wellpath's Cost Proposal in response to the County's RFP.

⁵ As this Court is aware, NCCHC is the preeminent, nationally recognized organization dedicated to improving the quality of health care in jails, prisons and juvenile confinement facilities. Originating as an AMA program in 1970 and formally established more than 35 years ago, NCCHC promulgates rigorous and widely used standards for correctional health care and, among other things, operates a national accreditation program for institutions meeting those standards. More information about NCCHC may be found at its website: <https://www.ncchc.org/>.

- While some accreditation items are the responsibility of the County (such as custody and facility related requirements), the new contract requires Wellpath to provide a monthly report identifying any and all compliance concerns with NCCHC standards, regardless of whether they are medical or custody related, and additionally requires that the report advise the County if action is needed by the County, and if so, what actions are necessary to bring the item into compliance. (Wellpath contract section 3.2.1)
- Technological improvements:
 - ERMA – Wellpath’s fully-hosted electronic health record system. This system is owned, developed, and operated by Wellpath, with no servers required on-site at the County. It can interface with ProPhoenix, our Jail Management Software, to allow real-time insights to County staff on the status of inmate-patients and improve the intake process. (Wellpath RFP Proposal section 1.1)
 - Requirement that Wellpath contract with and use WISHIN, the Wisconsin Statewide Health Information Network, to ensure continuity of care upon an inmate-patient’s release from the facilities (RFP section 17.2);
 - Requirement that Wellpath interface with Clinical Solutions, the third-party pharmacy provider, through a bi-directional interface. Wellpath already works with Clinical Solutions at other facilities and has a functional interface with Clinical Solutions’ systems ready (Wellpath contract section 1.16);
 - Use of the Patient Activity Monitoring Management application (PAMM), an advanced patient monitoring system that uses computer tablets and the application to better document wellness checks, segregation rounds, patient observations, and other cell-side treatments. PAMM will increase auditability of Wellpath’s actions and substantially reduce concerns about falsification or inaccuracy of records by making real-time updates to ERMA through Wi-Fi. Pictures of patients are captured at the time of treatment for additional auditability, and PAMM data will be made available through a performance dashboard to allow facility administration to have real-time access to the data (Wellpath RFP Proposal Section 5.3).
- Staffing requirements as stated in the RFP, including related penalties for failure to meet staffing requirements (RFP sections 11.1.2, 11.1.3);
- Improved reporting requirements and amendment requirements, allowing County greater control over the type and timing of reports and ensuring that all requests made by the Court Monitor are reviewed and approved by facility administration (Wellpath contract section 3.2); and

- Improved insurance requirements, designed to cover the County in the case of emergency or lawsuit (RFP Addendum I).

Representatives from Wellpath will be present at the January 31, 2019 status conference (they will also attend the Finance Committee meeting earlier that morning) to address any questions that the Plaintiffs or the Court may have. Wellpath currently operates twenty-seven (27) facilities in twenty-two (22) Wisconsin Counties, including Dane County, Waukesha County, and Brown County. A list of the Wisconsin counties where Wellpath currently provides inmate medical services in Wisconsin is enclosed (“**Attachment 5**”).

Wellpath’s past successes create optimism that Wellpath will prove to be a trusted partner. For example, Wellpath took over the 24-hour coverage of all medical, dental, mental health, and psychiatry services for all adult and juvenile offenders housed in the Shelby County Jail (located in Memphis, TN), the Shelby County East Women’s Facility and the Juvenile Court of Memphis and Shelby County. Under its previous health care provider, Shelby County had been under a Consent Decree from the United States Department of Justice for over twelve years. Within 18 months of Wellpath assuming medical services at the Shelby County facilities, the decree was lifted. Not only was the decree lifted, but Shelby County was one of only 33 agencies in the United States recognized as achieving the “Triple Crown” of accreditations (from the NCCHC, American Correctional Association (ACA) and the Commission on Accreditation for Law Enforcement Agencies (CALEA). Wellpath provides medical services at 17 other facilities that have achieved “Triple Crown” status and at 46 facilities accredited by the NCCHC.

Additionally, Wellpath provides comprehensive medical care to inmates in the custody of the Wayne County (Michigan) Sheriff’s Office. Wellpath began providing services at four Wayne County detention facilities in 2017. Wayne County is under a Consent Decree, and Wellpath has made significant strides toward lifting the decree. In 2018, as a result of Wellpath’s efforts, Wayne County submitted its first-ever application for NCCHC accreditation in June 2018, which it has now achieved. Additional information regarding Wellpath’s performance for Shelby County and Wayne County and information regarding Wellpath facility accreditations are enclosed (see “**Attachment 6**”).

2. Contract Monitoring

Given that contract terms are only as valuable as the County’s ability to enforce them, and based on the County’s past experiences with Armor and this case, the County is retaining, for the first time, an independent expert contract monitor. The County employed a separate RFP process to identify this monitor. The monitoring RFP was issued on September 21, 2018 and closed on October 26, 2018. After an evaluation of the proposals, NCCHC Resources, Inc. (“NRI”) was recommended as the awardee. NRI is a non-profit subsidiary of the National Commission on Correctional Health Care, which provides technical consulting services for correctional health care systems nationwide (see <https://www.ncchc.org/technical-assistance> and “**Attachment 7**”). NRI’s

employees and contractors represent a wide variety of experts in the correctional health field, including clinicians, educators, administrators, and other thought leaders.

The contract will be presented to the Finance Committee, along with the Wellpath contract, on January 31, 2019, and will be subject to the same review and legislative cycle deadlines. Like the Wellpath contract, the NRI contract monitoring agreement can be accessed via CLIC, as attached to File No. [TBD]. Importantly, the contract will include a lead monitor, a medical monitor, and a fiscal monitor, all of whom will be overseen and supported by NRI's Chief Health Officer, Dr. Brent Gibson (Dr. Gibson's curriculum vitae is enclosed as "**Attachment 8**"). Dr. Gibson previously assisted the County in drafting the medical services RFP and with other ad hoc projects. Separately, but also in his capacity as the Chief Health Officer for NRI, he will also assist the County with the insourcing analysis as described in greater detail below in Section II.

C. County Board Directs Insourcing Analysis

On December 6, 2018, after the Armor contract extension was executed, but before Wellpath was announced as the RFP awardee, the Finance Committee recommended for adoption a Resolution related to File No. 18-898 (see "**Attachment 9**" enclosed herewith). That Resolution states that the County Board "reaffirms and recommends that inmate medical services be directly provided by Milwaukee County ... rather than a private vendor," and requires the Administration, the Sheriff's Office, the Office of Corporation Counsel, and the Office of the Comptroller to report to the Finance Committee on January 31, 2019 at 9:00 a.m. regarding the feasibility of providing medical services in-house with "clear lines of accountability."

The Resolution requires the report to include an analysis of whether a "Department of Medical Services" should be created, the need for a contract monitor and oversight thereof, and cost and risk analyses comparing insourcing and outsourcing models, including potential litigation risk. The County Board adopted this Resolution on December 13, 2018, and in so doing, amended the resolution to additionally require that under either model: (a) certification by the NCCHC within 18 months; (b) medical record software; (c) adherence to the Prison Rape Elimination Act of 2003; and (d) an independent contract monitor.

The first report related to this Resolution can be accessed via CLIC under File No. 19-14, available at <https://milwaukeecounty.legistar.com/Calendar.aspx> ("2019 Inmate Medical Services Plan") (see "**Attachment 10**" enclosed herewith, not including Exhibit B to the report, which is duplicative of other attachments to this letter).

The Finance Committee will consider this 2019 Inmate Medical Services Plan and the proposed Wellpath contract on January 31, 2019 at 9:00 a.m. As noted above, depending upon the Finance Committee's agenda and the length of discussion on these topics, it may be possible to provide this Court with an update on the Finance Committee's actions at the status conference currently scheduled for 2:00 p.m. that same day.

II. Insourcing Analysis

Importantly, the Administration, the County Board, Plaintiffs, this Court, and the Milwaukee County community all share the same objective – the provision of appropriate, Constitutionally-compliant, taxpayer dollar-efficient medical services for all Milwaukee County jail and HOC inmates, such that all inmates are treated with dignity and respect, whether through a cooperative and effective relationship with a vendor, or through insourcing. To ensure the most reliable, objective and usable assessment of which model is best suited to achieve the desired objective, the County has and will retain highly-regarded experts.

In an email dated December 14, 2018, Deputy Director of Administrative Services Amy Pechacek shared with various members of the County Board a proposal put forward by Dr. Brent Gibson, Chief Health Officer with NRI (proposal is enclosed as “**Attachment 11**”). In this proposal, Dr. Gibson states that analyses of (1) necessary health services; (2) necessary support for health services; (3) staffing needs; (4) informational technology needs, including third-party billing management; and (5) facility needs are required, as well as analysis of the costs and risks associated with each element under both models. He estimates that a fulsome analysis will take three to six months.

The County is also seeking to retain an economist to model and better understand labor market costs for the County (versus an outside vendor) in the short, medium, and long-term, as well as to assist the County with monetizing various nonmarket risks, such as litigation risk, accountability/chain of command risk, and finally, to help understand likely profit margins and the underlying basic economics of the inmate medical services industry.

III. Consent Decree Next Steps

The County reviewed Dr. Shansky’s recent reports, including the report from his Jail and House of Correction site visits on October 16-19, 2018, which was introduced after the last status conference on October 24, 2018. The qualitative, narrative, and non-specific character of Dr. Shansky’s reports and analyses, in conjunction with his oftentimes hard-to-apply discussions, including those from the most recent status conference—either due to a lack of specificity and/or a focus on minutiae⁶—have created significant interpretation challenges for the County, as well as

⁶ These issues date back several years. Indeed, Dr. Shansky initially objected to the Armor contract in 2012. Despite numerous requests, Dr. Shansky failed to inform the parties what he believed should be included in the original contract to satisfy his concerns. Additionally, he was asked repeatedly to provide a medical and mental health staffing plan so that the County could understand what compliance meant to Dr. Shansky. Based upon the significant delay in obtaining this information, the Court ultimately ordered that the County enter into the contract with Armor. The Court previously recognized that Dr. Shansky had “become a bit of a crutch,” and recognized that the Court, not the Medical Monitor is to decide when the County is in substantial compliance. (5/28/13 Tr. p. 22, lines 5-21). These

for Plaintiffs, this Court, and the Milwaukee County community. It is very difficult to ensure that the County, Plaintiffs, and the Court possess a shared understanding of what actually constitutes “substantial compliance,” beyond the impressions and generalities submitted by Dr. Shansky and our shared altruistic, but practically and fiscally unachievable, desire for “the ideal.” Most critically, it is virtually impossible for the County to determine what exactly it must do in order to demonstrate “substantial compliance” and bring the decree to a conclusion—after nearly twenty years—should this pattern and these practices continue.

The County certainly respects Dr. Shansky’s expertise and his lengthy tenure as the Court-appointed monitor. The model of assessment represented by Dr. Shansky, where one individual assesses quality of care, etc., and makes recommendations, is certainly one with precedent. However, there is another model of assessment for correctional health services quality, now widely considered to be the industry standard and a best practice (see letter from Dr. Brent Gibson of NRI enclosed as “**Attachment 12**”) that relies on standards of practice and care derived from a collaborative effort of many medical professionals and other experts across a range of disciplines, instead of a single individual. The NCHCC Standards were developed using that model, and the NCHCC’s accreditation process provides a framework for putting those standards into practice.

Given the foregoing, the County respectfully submits to this Court that with the onboarding of Wellpath and the introduction of NRI as an expert, independent contract monitor, applying the

frustrations continue. The following are a representative sample of confusing and nonactionable discussions in the most recent status conference and in reading his last two compliance reports for 2018:

- Dr. Shansky provided comments in his reports about how he is feeling about leadership (*e.g.*, a new Sheriff and Medical Director gave Shansky reports he liked). (Shansky report from Site Visit on May 1-4, 2018, pp. 1-2).
- At the most recent status on October 24, 2018, Dr. Shansky raised for the first time his proposal that the County enter into an agreement with a vendor allowing the vendor to select and negotiate costs with a psychiatrist, and the County would reimburse the vendor if it went over a certain amount. (10/24/19 Tr. pp. 30-32, lines 15-25, 1-25, 1-14, pp. 43-44, lines 12-25, 1-5).
- The Court asked Dr. Shansky on October 24, 2018 that he include in his unfinished report a reasonable schedule for Shansky to receive the quality improvement program information on a routine basis so that there might be an expectation of the timing regarding when Shansky will review performance evaluations, such as every 90 to 120 days. (Tr. pp. 28-49, lines 20-25, 1-15). Shansky stated he needed this information because: “There is no way when I review records I can reach any conclusions about individual staff. I can reach general conclusions about the services and that’s why so many things are in partial compliance.” (Tr. p. 49, lines 1-4). Shansky’s October 2018 report, a copy of which the County received in early November 2018, made no mention of a schedule or expectation of regular submission of evaluations.
- Dr. Shansky’s October report fails to provide the court with a schedule for reviewing performance evaluations even though conducting performance reviews was the only recommendation he made for the Medical Director, the Physician at the HOC, and the Nursing Director.

most up-to-date best practices and standards for assessment of correctional facility medical services, now is the time to set forth measurable, objective, quantitative performance metrics—enshrined in an order of this Court—that, if satisfied over a specifically delineated period of time, constitute “substantial compliance.” Respectfully, the County suggests that the model represented by the NCCHC Standards and accreditation process provides such metrics. The attached letter from Dr. Gibson supports the County’s position.

To adopt the NCCHC model as the County is presently suggesting certainly does not diminish the importance of Dr. Shansky’s observations and recommendations, such as those made in his October 2018 report. To the contrary, as explained by Dr. Gibson in the attached letter, the County’s proposed use of the NCCHC model aligns with Dr. Shansky’s goals very well, if not the assessment model his reports represent. For example, Dr. Shansky’s concerns over staffing levels would be directly addressed through the application of the NCCHC Standards and the penalties built into the proposed contract with Wellpath. That being stated, whatever alignment there may be with respect to goals, unless a more rigorous and measurable methodology and approach to the Consent Decree (such as defining “substantial compliance” as NCHCC accreditation) is adopted, it appears likely that the Consent Decree would continue *ad infinitum*. By its terms, the parties originally contemplated that the Consent Decree would only be in effect for two years.

IV. Requests to the Court

Respectfully, the County is requesting that the Court amend the Order to permit the County to (a) transfer medical and mental health services from Armor to Wellpath as of April 1, 2019; and (b) analyze insourcing options, so long any insourcing model ensures that the County meets or exceeds the same standards and requirements set forth in the County’s proposed contract with Wellpath, as demonstrated through appropriate data capture and reporting.

The County also respectfully requests that this Court, as soon as possible, enter an order defining “substantial compliance” as the achievement of NCCHC accreditation. Should the Court determine not to order the use of the NCCHC Standards and accreditation process, then the County respectfully requests that the Court provide a legal framework for substantial compliance that, like the NCCHC standards, establishes objective, quantitative, and measurable metrics, so that all stakeholders, including the public and the parties to this action, understand precisely what is required. Further, the County requests that the selected metrics be held constant over time, so that there is little to zero risk that the “goal posts move.”

Finally, please allow us to briefly address the Plaintiffs’ most recent filing. The County, too, looks forward to Sheriff Lucas’s efforts to continue and build upon the efforts undertaken to ensure that the population numbers and the services at the Jail are constitutionally compliant. The County disagrees with Plaintiffs’ statement that a judicially-enforced cap on the population in the Jail is necessary to “incentive [our] efforts.” The County is reviewing this issue and will offer a thorough response addressing Plaintiffs’ concerns regarding the Jail population numbers, which

we firmly believe will demonstrate that “there is no longer a need for the Court’s involvement to prevent future overcrowding.”

We look forward to further addressing these issues with the Court on January 31, 2019.

Respectfully submitted,

Respectfully submitted,

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cc: Mr. Peter M. Koneazny
Mr. Laurence J. DuPuis
Ms. MaryNell Regan